

			<p align="center">OFFICE OF THE COMMISSIONER</p> <p align="center">CUSTOM HOUSE, KANDLA</p> <p align="center">NEAR BALAJI TEMPLE, NEW KANDLA</p> <p align="center">Phone : 02836-271468/469 Fax: 02836-271467</p>
DIN- 20240471ML0000000ECE			
A	File No.	GEN/ADJ/ADC/668/2024-Adjn-O/o Commr-Cus-Kandla	
B	Order-in-Original No.	KDL/ADC/DPB/03/2024-25	
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.	
D	Date of Order	21.05.2024	
E	Date of Issue	21.05.2024	
F	SCN NO. & Date	Waiver of Show Cause notice	
G	Noticee / Party / Importer / Exporter	M/s. MGA & Associates, KASEZ, Shed No. 1, CPWD Type, Sector - 1, Phase-1, Kandla Special Economic Zone, Gandhidham, Kutch.	

1. यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमा शुल्क 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:

**“सीमा शुल्क आयुक्त (अपील),
वीं 7मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, 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/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्न लिखित 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 मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदिके भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।
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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 case

M/s. MGA & Associates, KASEZ (hereinafter referred to as 'SEZ unit') is situated at Shed No. 1, CPWD Type, Sector - 1, Phase-1, Kandla Special Economic Zone, Gandhidham, Kutch. Letter of Approval (LOA) dated 13.11.2020 was granted to them vide F.No. KASEZ/IA/24/2020-21(**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 an SEZ unit and carry out authorized operations of *repair, re-conditioning, and segregation etc. of obsolete/discarded outdated electrical, electronic components/devices, instruments, computer and IT products for export purpose only.*

2. The said SEZ Unit had filed Bill of Entry no. 1015287 dated 07.10.2023 (**RUD-2**) for importing the goods declared as "*OBSOLETE/DISCARDED ELECTRONIC ITEMS FOR SEGREGATION*". Based on information received by the SIIB, Custom House, Kandla that Container No. OOLU8541539 filed under BE No. 1001430 dated 01.02.2022 destined to KASEZ, Gandhidham might be containing "BRAND NEW LAPTOPS AND OTHER ELECTRONIC ITEMS", the container was detained and examined at the gate of premises of M/s MGA & Associates, KASEZ by the SIIB Officers of Kandla as per the provisions of the Customs Act, 1962. The examination of the said container was carried out by the SIIB, Kandla Customs, under panchnama dated 13.10.2023 (**RUD-3**) in the presence of Shri. Mohammed Rafik Bara, partner, M/s MGA & Associates, KASEZ.

3. After examination of the imported cargo, it was found that M/s. MGA & Associates, KASEZ, via the said Bill of Entry No. 1015287 dated 07.10.2023, imported old, used & discarded electronic/electrical items such as double door refrigerators, microwave ovens/OTGs, lawn mowers, vacuum cleaners, lawn & paper shredders, electric kettles, electric toasters, torches, table/pedestal fans etc. Furthermore, officers of SIIB, Kandla found that the goods imported prima facie did not fit in the classification/declaration in the Bill of Entry 1015287 dated 07.10.2023 and therefore directed ShriMohd. Rafikbara not to deal/part/temper with the cargo imported via the said BoE without prior permission of the competent Authority of the Customs.

4. During the course of inquiry proceedings, to clarify the doubt with respect to the permission of imported items in their LOA, a letter to the DC, KASEZ seeking clarification regarding permissibility for "import of second-hand goods as found during examination vide Panchnama dated 13.10.2023" to the

unit M/s MGA & Associates, was issued. As per the letter dated 14.12.2023 **(RUD-4)**, it was informed that via the renewal of LoA dated 03.08.2023 issued to M/s. MGA & Associates, KASEZ, the SEZ Unit has been granted authorization to undertake the authorized operation/ Manufacturing activity of “Repairs, Re-engineering, Reconditioning, Remaking, and Segregation etc. of obsolete/outdated/discarded Electric, Electronic Components, devices, appliances, Instruments, telecommunication, & transmission equipment, Computers and peripherals, equipment including I. T products and such other items”.

5. Based on the clarification received and findings of examination proceedings carried out via Panchanama dated 13.10.2023, the case was transferred to KASEZ via letter CUS/SIIB/INT/620/2023 dated 03.01.2024 **(RUD 5)**. Whereas, it is mentioned that:

“6. It is pertinent to mention that during examination, it was observed that M/s. MGA & Associates, KASEZ has declared the CTH as 84719000 which does not match with the description of the goods imported via Bill of Entry No. 1015287 dated 07.10.2023. However, since the goods were not found as per intelligence and the KASEZ authorities had already issued instruction for 100 percent examination on 10/10/2023 (copy attached), the case is transferred to KASEZ for further necessary action at their end”

6. A letter dated 04.04.2024 **(RUD 6.1)** was forwarded to SIIB, Kandla to provide the detailed examination report for the goods examined under Panchnama dated 13.10.2023. Based on the reply received dated 05.04.2024 **(RUD 6.2)** and Request received from SEZ Unit via letter dated 05.04.2024 **(RUD 6.3)** to complete the process of examination as per examination order dated 10.10.2023 for the goods imported via Bill of Entry no. 1015287 dated 07.10.2023, the goods were 100 percent examined by the officers of KASEZ under Panchnama proceeding dated 06.04.2024 **(RUD-6.4)**. During the Panchnama proceeding carried out for detailed examination, it was found that all the imported goods were old/used and in unusable form. The details and photographs of the imported goods which are old and used/discarded are as follows:

Table-IDetails of goods found during Panchanama proceedings

Sl.No.	<u>Details of discarded/old and used Goodsfoundduring Panchanama proceedings</u>	Qty in pcs.	Qty in Kgs
1	Tea Kettle	475	574
2	Electric Mops	255	369
3	Microwave Oven (small)	12	104
4	Microwave Oven (big)	36	343
5	Vaccum Cleaner	32	151
6	Vaccum Cleaner (rechargeable)	60	93
7	Vaccum Cleaner (small)	160	159
8	Vaccum Cleaner bucket	22	89
9	Fridge	10	1204
10	Grass Cutting Machine	55	602
11	Heater	26	128
12	Heater Light	20	88
13	Heater Long	75	163
14	Projector	30	118
15	Toaster	65	96
16	Table Fans (small)	52	105
17	Table Fans	44	109
Total		1429	4495

Photographs of the discarded/old and used Goods found during Panchanama proceedings:







7. The goods imported declared as “OBSOLETE/DISCARDED ELECTRONIC ITEMS FOR SEGREGATION” were found to be other than the goods declared and appeared to be mis-classified. *In a subsequent communication dated 08.04.2024 (RUD 7), the SEZ Unit acknowledged that the description and declared Customs Tariff Heading (CTH) of the imported goods were vague and differed from what was stated in the Bill of Entry.* They attributed this discrepancy to their incomplete and limited knowledge of the Customs tariff. Thus, the letter dated 08.04.2024 further reaffirms the findings of the Panchnamadated 06.04.2024.

8. Further in their letter dated 08.04.2024, the SEZ Unit admitted their mistake and sought leniency. They explicitly stated that they did not wish to receive a Show Cause Notice and were willing to accept any associated penalties. The SEZ Unit emphasized that their operations primarily involve the repair, re-conditioning, and segregation of obsolete or outdated electrical and electronic components, instruments, computers, and IT products. They clarified that they export goods only after completing the necessary re-conditioning, repair, or segregation activities. Further, they have submitted that, as the goods did not bear any revenue implication, it is requested by the SEZ Unit to decide the penalty on merit grounds.

9. In view of above, the following charges were proposed in the Investigation report -

- a. The declared descriptions, CTHs and other aspects of the imported subject goods appear to be incorrect and same needs to be rejected and re-classified under proper product-wise CTH as per product descriptions mentioned in Annexure-A.
- b. The mis-declared goods in terms of description, CTH and other characteristics having transaction value of Rs. 12,42,898/- appear to be liable for confiscation under Section 111 of the Customs Act, 1962.
- c. The said SEZ unit appears to be liable for penalty under Section 112&114AA of the Customs Act, 1962.

10. The noticee vide letter dated 08.04.2024 requested for waiver of Show cause notice and hearing in the matter.

10.1. 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 is allowed waiver of Show cause notice.

Discussion and Findings:-

11. I have gone through the Investigation report, submission dated 08.04.2024 and all the documents available on record.

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

- (i) whether the notice has mis-declared the description and CTH of the subject imported goods;
- (ii) Whether the mis-declared goods 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 and 114AA of the Customs Act, 1962.

13. I find that M/s. MGA & Associates, 'SEZ unit' were granted Letter of Approval (LOA) dated 13.11.2020 to operate as an SEZ unit and carry out authorized operations of *repair, re-conditioning, and segregation etc. of obsolete/discarded outdated electrical, electronic components/devices, instruments, computer and IT products for export purpose only.*

14. I find that the SEZ Unit filed Bill of Entry no. 1015287 dated 07.10.2023 for importing the goods declared as "*OBSOLETE/DISCARDED ELECTRONIC ITEMS FOR SEGREGATION*". Based on the information received by the SIIB, Custom House, Kandla that Container No.OOLU8541539 filed under BE No. 1001430 dated 01.02.2022 destined to KASEZ, Gandhidham might be containing "*BRAND NEW LAPTOPS AND OTHER ELECTRONIC ITEMS*", the container was detained and examined at the gate of premises of M/s MGA & Associates, KASEZ by the SIIB Officers of Kandla.

15. I find that after examination of the imported cargo, it was found that the goods imported were old, used & discarded electronic/electrical items such as *double door refrigerators, microwave ovens/OTGs, lawn mowers, vacuum cleaners, lawn & paper shredders, electric kettles, electric toasters, torches, table/pedestal fans etc.* Furthermore, officers of SIIB, Kandla found that the goods imported prima facie did not fit in the classification/declaration in the Bill of Entry 1015287 dated 07.10.2023 and therefore directed Shri Mohd. Rafikbara not to deal/part/temper with the cargo imported via the said BoE without prior permission of the competent Authority of the Customs.

16. I find that LoA was renewed on 03.08.2023 while allowing them to undertake the authorized operation/ Manufacturing activity of "*Repairs, Re-engineering, Reconditioning, Remaking, and Segregation etc. of obsolete/outdated/discarded Electric, Electronic Components, devices, appliances, Instruments, telecommunication, & transmission equipment, Computers and peripherals, equipment including I. T products and such other items*". Therefore, the goods imported by them were allowed to be imported as per the conditions of LoA.

17. The details of the imported goods which are old and used/discarded are as follows:

Details of goods found during Panchanama proceedings

Sl.No.	<u>Details of discarded/old and used Goodsfoundduring Panchanama proceedings</u>	Qty in pcs.	Qty in Kgs
1	Tea Kettle	475	574
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3	Microwave Oven (small)	12	104
4	Microwave Oven (big)	36	343
5	Vaccum Cleaner	32	151
6	Vaccum Cleaner (rechargeable)	60	93
7	Vaccum Cleaner (small)	160	159
8	Vaccum Cleaner bucket	22	89
9	Fridge	10	1204
10	Grass Cutting Machine	55	602
11	Heater	26	128
12	Heater Light	20	88
13	Heater Long	75	163
14	Projector	30	118
15	Toaster	65	96
16	Table Fans (small)	52	105
17	Table Fans	44	109
Total		1429	4495

18. The descriptions and CTH declared by the SEZ unit did not match with the goods examined by the department. Therefore, the correct description and CTH is as follows:-

<u>Annexure A</u>						
Sr No.	Description of Goods	CTH	Qty in Kgs	Qty in Pcs	Value Per Pcs	Total Value in USD
1	Tea Kettle	85167100	574	475	3.89	1848.28
2	Electric Mops	85098000	369	255	4.66	1188.18
3	Microwave Oven (Small)	85165000	104	12	15.84	190.11
4	Microwave Oven (Big)	85165000	343	36	19.98	719.26

5	Vaccum Cleaner	85081900	151	32	6.94	222.23
6	Vaccum Cleaner (rechargeable)	85081900	93	60	5.97	358.08
7	Vaccum Cleaner (Small)	85081900	159	160	3.91	626.16
8	Vaccum Cleaner (Bucket)	85081900	89	22	17.19	378.12
9	Refrigerators	84182900	1204	10	387.69	3876.88
10	Grass Cutting Machine	84331190	602	55	35.24	1938.44
11	Heater	85162900	128	26	15.01	390.22
12	Heater Light	85162900	88	20	11.16	223.26
13	Heater Long	85162900	163	75	12.55	941.28
14	Projector	90072090	118	30	12.67	379.96
15	Toaster	85167200	96	65	7.76	504.30
16	Table Fans (Small)	84145110	105	52	6.34	329.44
17	Table Fans	84145110	109	44	8.20	360.80
			4495	1429		14475.00
Total Transaction Value in INR						12,42,898/-

19. It is clear that the SEZ unit has mis-declared the goods in terms of their descriptions and CTH, however, it is also pertinent to note that the goods though mis-declared were allowed as per the LoA issued to them.

I further find that the SEZ unit vide letter dated 08.04.2024 has submitted that the imported goods were permissible under the terms of their licence, which specifically authorize their importation for the purpose of reconditioning or repair. They have further argued that the goods were to exported. The discrepancies identified were due to oversight by the consigner/shipper and they relied on the documents provided to them. Therefore, neither the intention to evade duties of Customs under Section 30 of SEZ Act, 2005 nor the intention to mis-declare the goods in order to claim more exemptions from duty under Section 26 of the SEZ Act, 2005 is established.

20. CONFISCATION OF GOODS:-

21. It is apparent that the SEZ unit has mis-declared the description and CTH 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)).

However, it is necessary to note that such mis-declaration has not resulted in any evasion of duty. Further, such mis-declaration was not carried out in order to evade duties of customs or claim more exemptions. Therefore, I shall be taking a lenient view while imposing redemption fine and penalties.

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

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

22.2 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.

22.3 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

22.4 Further, it is pertinent to note that 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.

22.5 However, it is amply clear that the SEZ unit has mis-declared the goods in terms of description and CTH which has rendered the goods liable for confiscation, therefore, I find it apt to penalise the noticee with penalty of Rs. 5,000/- as provided in the provisions of Section 112(a)(ii) of the Customs Act, 1962.

22.6 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 description and CTH, 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.

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

- i. I reject the description and CTH of the goods declared by the SEZ unit in Bill of Entry No. 1015287 dated 07.10.2023 and order to re-determine the same as mentioned in Annexure-A above. The total value of the goods is Rs. 12,42,898/-
- ii. I order to confiscate the subject goods valued at Rs. 12,42,898/- under the provisions of Section 111(m) of the Customs Act, 1962. However, I give them an option to pay fine of Rs. 50,000/- (Rupees Fifty thousand only) 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. 40,000/- (Rupees Forty thousand only) under Section 114AA of the Customs Act, 1962.

24. 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/668/2024-Adjn-O/o Commr-Cus-Kandla

DIN-20240471ML0000000ECE

To,

M/s. MGA & Associates, KASEZ

Shed No. 1, CPWD Type, Sector - 1,

Phase-1, Kandla Special Economic Zone,

Gandhidham, Kutch.

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.