



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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| A | File No. | CUS/APR/INV/167/2024-Gr 5-6-O/o Pr Commr-Cus-Mun |
| B | Order-in-Original No. | MCH/ADC/AK/76/2024-25 |
| C | Passed by | ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra. |
| D | Date of Order | 20.06.2024 |
| E | Noticee/Party/ Importer/ Exporter | M/s. Angira Art Export (IEC 1305031164),E-97, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001 |
| F | DIN No. | DIN- 20240671MO000000B66A |

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”**

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

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

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये 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 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 इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

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

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

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

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

ISSUE IN BRIEF:

M/s Angira Art Export (IEC-1305031164) situated at E-97, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001 ('Importer' for the sake of brevity) filed Bills of Entry No. (i) 9534483 dated 04.01.2024 and (ii) 9534484 dated 04.01.2024 for import of 'Fiber Laser Cutting Machine' and 'Fiber Laser Welding' machine through Customs Broker-M/s Rishad Shipping and Clearing Agency (AABCR4487QCH007) at Mundra Port under Export Promotion Capital Goods (EPCG) Scheme.

2. The supplier in case of BE No. 9534483 dated 04.01.2024 is M/s Jinan Xintian Technology Co. Ltd No. 866, Chunyuan Road, Shandong Province, China and in case of BE No. 9534484 dated 04.01.2024 is M/s Jian Senfeng Laser Technology Co. F-4-6-601, Innovation Works, No. 2016, Shandong Province, China.

3. Vide Notification No. 15/2023-Customs (ADD) dated 22.12.2023 issued vide F. No. CBIC-190354/240/2023-TO (TRU-I)-CBIC, Anti-Dumping Duty (ADD) has been imposed on some specific goods, falling under HSN- 84561100, 84569090, 84798199, 85152190, 85158090 and 90132000 i.e. Industrial Laser Machines in fully assembled, SKD or CKD form used for cutting, marking or welding operations imported from China.

3.1 The relevant part of the said notification is reproduced herein under:

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

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

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

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

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

produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty calculated at the rate as specified in the corresponding entry in column (7) of the said Table, namely:-

Table

| SN | Tariff Item | Description of Goods | Country of origin | Country of Export | Producer | Duty as % of CIF |
|-----|---|---|-------------------|--------------------------------|--|------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1 | 84561100, 84569090, 85152190, 85158090 and 90132000 | Industrial Laser Machines, in fully assembled, SKD or CKD form, used for cutting, marking, or welding operations* | China PR | Any country including China PR | GD Han's Yueming Laser Group Co., Ltd. Han's Laser Smart Equipment Group Co., Ltd. Han's Laser Technology Industry Group Co., Ltd. Han's MP Laser Technology Co., Ltd. Suzhou Songgu Intelligent Equipment Co., Ltd. | 24.66% |
| 2 | -do- | -do- | China PR | Any country including China PR | Jiangsu Yawei Machine Tool Co., Ltd. Jiangsu Yawei Chuangkeyuan Laser Equipment Co., Ltd. | 43.35% |
| 3 | -do- | -do- | China PR | Any country including China PR | TRUMPF (China) Co., Ltd. Jiangsu Jinfangyuan CNC Machine Co., Ltd. | Nil |
| 4 | -do- | -do- | China PR | Any country including China PR | HSG Laser Co., Ltd Jinan Hongshi Laser Technology Co., Ltd | 22.54% |
| 5 | -do- | -do- | China PR | Any country including China PR | Bystronic (Tianjin) Laser Ltd Bystronic Laser AG Bystronic (Shenzhen) Laser Technology Co., Ltd | 30.16% |
| 6 | -do- | -do- | China PR | Any country including China PR | Jinan Bodor CNC Machine Co., Ltd | 84.22% |
| 7 | -do- | -do- | China PR | Any country including China PR | Jinan Oree Laser Equipment Co., Ltd. Shandong Oree Laser Technology Co. Ltd | 87.30% |
| 8 | -do- | -do- | China PR | Any country including China PR | Gweike Tech Co., Ltd | 90.49% |
| 9 | -do- | -do- | China PR | Any country including China | Any, other than SN 1 to 8 | 147.20% |

| | | | | | | |
|----|------|------|----------------------------|----------|-----|---------|
| | | | | PR | | |
| 10 | -do- | -do- | Any other than China PR | China PR | Any | 147.20% |

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

4. In view of the above, w.e.f. 22.12.2023, ADD is payable on Industrial Laser Machines (HSN- 84561100, 84569090, 84798199, 85152190, 85158090 and 90132000) imported from China on the rate specified in the above notification.

5. However, upon observations and intelligence gathered and developed on the basis of data analysis by SIIB, Mundra, it was noticed that the Bills of Entry No. (i) 9534483 dated 04.01.2024 and (ii) 9534484 dated 04.01.2024 filed by M/s Angira Art Exports for import of laser cutting and laser welding machine from China under the EPCG scheme were filed without considering the element of ADD and therefore these consignment were kept on hold for further examination and investigation by the SIIB, CH, Mundra.

6. Here, it is pertinent to mention that the ADD is imposed under **Section 9A of the Customs Tariff Act** read with Rules 18 & 20 of the Customs Tariff (Identification, Assessment and collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

7. Further, it is to submit that vide **Notification No. 26/2023-CUSTOMS** dated **01.04.2023**, the EPCG scheme under Foreign Trade Policy, 2023 has been implemented vide which import of capital goods have bene exempted from the

- i. *whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and*
- ii. *the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, when specifically claimed by the importer;*
- iii. *the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-sections (7) and (9) of section 3 of the Customs Tariff Act.*

Further, the exemption under this notification shall be subject to the following conditions, namely: -

(1) *that the goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty.*

(2) *that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed to the authorisation, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance.*

8. In view of the above, on congruent reading of applicability of ADD and exemption from payment of duty under EPCG scheme, it appears that the ADD imposed under Section 9A of the Act, *ibid* is not exempted under the EPCG Scheme and applicable ADD, if any is payable on the capital goods imported under EPCG scheme.

9. The Examination of the consignments pertaining to Bills of Entry No 9534483

dated 04.01.2024 and 9534484 dated 04.01.2024 was done under Section 17(2) of the Customs Act, 1962. During the examination, in order to determine the exact nature, value and technical specification of the Machinery items, empanelled Chartered Engineer, Shri Tushar Zankat was called for inspection. Shri Tushar Zankat vide his reports dated 25.01.2024 confirmed that the items under BE 9534483 dated 04.01.2024 is identified as new Fibre Laser Cutting Machine with fair and reasonable value. Further items under BE 9534484 dated 04.01.2024 is identified as new Fibre Laser Welding Machine with fair and reasonable value.

10. From the documents submitted by the representative of the CB, during the investigation, it was noticed that in case of BE No. 9534484 dated 04.01.2023, the description and the CTH of the goods, i.e. Fiber Laser Welding Machine, mentioned at the Bill of Lading and Country Of Origin cert (COO) was different from the description declared on the Bill of Entry in as much as that in the Bill of Lading & COO, the item is declared under CTH-85158090, whereas, in the BE, the CTH was declared as 84561100.

11. In order to determine the correct classification of the said good, relevant chapter Headings and corresponding Explanatory Notes were examined and the same are reproduced below:

CHAPTER HEADING: 8456

8456 MACHINE-TOOLS FOR WORKING ANY MATERIAL BY REMOVAL OF MATERIAL, BY LASER OR OTHER LIGHT OR PHOTON BEAM, ULTRA-SONIC, ELECTRO-DISCHARGE, ELECTRO-CHEMICAL, ELECTRON BEAM, IONIC-BEAM OR PLASMA ARC PROCESSES; WATERJET CUTTING MACHINES

– Operated by laser or other light or photon beam processes:

8456 11 00 – Operated by laser

EXPLANATORY NOTES:

8456- MACHINE-TOOLS FOR WORKING ANY MATERIAL BY REMOVAL OF MATERIAL, BY LASER OR OTHER LIGHT OR PHOTON BEAM, ULTRA-SONIC, ELECTRO-DISCHARGE, ELECTRO-CHEMICAL, ELECTRON BEAM, IONIC-BEAM OR PLASMA ARC PROCESSES; WATERJET CUTTING MACHINES

A. Machine Tools for Working by Laser or other light of photon beam process-

Laser-beam machining (photonic machining) consists of bombarding a target with photon. This group covers, in particular, machines for drilling (metals, rubies for watches etc.), machines for cutting metals or other hard materials and machines for engraving (figures, letters, lines etc.) on various highly resistant materials.

B. To (C)

The heading also excludes:

a. Ultrasonic apparatus for cleaning (heading 84.79)

- b. *Soldering, brazing or welding machines and apparatus, whether or not capable of cutting (heading- 85.15)*
- c. *Testing Machines (heading 90.24)*

CHAPTER HEADING: 8515

8515 ELECTRICS (INCLUDING ELECTRICALLY HEATED GAS), LASER OR OTHER LIGHT OR PHOTO BEAM, ULTRASONIC, ELECTRON BEAM, MAGNETIC PULSE OR PLASMA ARC SOLDERING, BRAZING OR WELDING MACHINES AND APPARATUS, WHETHER OR NOT CAPABLE OF CUTTING; ELECTRIC MACHINES AND APPARATUS FOR HOT SPRAYING OF METALS OR CERMETS

8515 80 - Other machines and apparatus:
 8515 80 10 --- High-frequency plastic welding machine
 8515 80 90 --- Other

EXPLANATORY NOTES:

8515 ELECTRICS (INCLUDING ELECTRICALLY HEATED GAS), LASER OR OTHER LIGHT OR PHOTO BEAM, ULTRASONIC, ELECTRON BEAM, MAGNETIC PULSE OR PLASMA ARC SOLDERING, BRAZING OR WELDING MACHINES AND APPARATUS, WHETHER OR NOT CAPABLE OF CUTTING; ELECTRIC MACHINES AND APPARATUS FOR HOT SPRAYING OF METALS OR CERMETS

8515.80- Other machines and apparatus:

- I. *Soldering, brazing or welding machines and apparatus*
- A. To (F)....
- (G) *Machines and apparatus for photon beam for welding, whether or not capable of cutting-*
Photon beam welding may be divided into:

- 1. *Laser beam welding:*
- 2. *Light beam welding:*

The Heading also excludes:

- a. *Packaging machines fitted with electric welding appliances (heading 84.22)*
- b. *Fusing presses (heading 84.51)*
- c. *Machines Designed exclusively for cutting (generally heading 84.56)*
- d. ..
- e. ...

12. On comparative and parallel reading of Heading of 8456 & 8515 and corresponding Explanatory notes as reproduce above, it appears that Laser cutting machines are rightly classifiable under HSN-8456 11 00, whereas Laser welding machines are classifiable under HSN-8515 80 90.

13. Further, in the EPCG license No. 13EAEP02312AM24 dated 20.12.2023, it was noticed that HSN- 85158090 is not mentioned in the list of items sought to be imported duty free under the said authorization. Therefore, it appears that CTH of the Fiber Laser

Welding Machine imported vide BE No. 9534484 dated 04.01.2023 was altered at the time of filling of BE from CTH-85158090 to CTH-84561100 to make it eligible for import under the EPCG Licence available with the importer.

14. Thereafter, a statement of Shri Manish Vaishnav, Account Manager Authorized Representative of M/s Angira Art Exports vide authority letter dated 31.01.2024 issued by Partner of M/s Angira Art Exports was recorded on 01.02.2024, wherein he, *inter-alia* submitted that

- *He was working as account manager in M/s Angira Art Exports, E-97, Industrial Area, Mandora, Jodhpur (Rajasthan) since 2003. He was looking after accounts and office management of M/s Angira Art Exports, E-97, Industrial Area, Mandora, Jodhpur (Rajasthan).*
- *M/s Angira Art Exports is engaged in manufacturing and trading of wooden and iron handicraft furniture items in Jodhpur since 1998. They are engaged in the export of these items since 2005. Their GSTIN is 08AALFA8687L1ZL and IEC No. 1305031164.*
- *M/s Angira Art Exports was a partnership firm having Shri Murlidhar Suthar, Shri Narayan Narayan Lal Suthar and Shri Dharmendra Suthar as partners.*
- *On being asked, he stated that they have imported Fiber Laser Cutting Machine Model XT-G1530 and classified the same under HSN- 84561100 vide BE No. 9534483 dated 04.01.2024 from M/s Jinan Xintian Technology Co. Ltd. China under the EPCG Scheme license No. 13EAEP02312AM24 dated 20.12.2023.*
- *On being shown the Notification No. 15/2023-Customs (ADD) dated 22.12.2023 issued vide F. No. CBIC-190354/240/2023-TO (TRU-I)-CBIC, he categorically admitted that the Fiber Laser Cutting Machine (HSN-84561100) imported by them vide BE No. 9534483 dated 04.01.2024 falls at the Sr. No. 9 of the table of Notification No. 15/2023-Customs (ADD) dated 22.12.2023 issued vide F. No. CBIC-190354/240/2023-TO (TRU-I)-CBIC and attracts ADD @ 147.20% of the CIF value.*
- *On being asked as to why they have not levied ADD on the above item, he stated that the said goods under BE No. 9534483 dated 04.01.2024 was boarded on ship from the exporting country on 08.12.2023. At the time of shipment, ADD was not applicable on this item, therefore, they were of the view that ADD will not be applicable on the import of this particular item. Therefore, at the time of applying EPCG license on 14.12.2023, they have not added the ADD portion in the duty saved value and accordingly, they have not considered the ADD value while debiting the Bond amount while filling the BE.*
- *On being asked to explain that in the case of BE No. 9534483 dated 04.01.2024, the entry inward of the consignment is 06.01.2024 and ADD was imposed vide notification no. 22.12.2023, i.e. much prior to the filing of BE on 04.01.2024/entry inward on 06.01.2024, then why the ADD was not considered while filing of the BE, he stated that they were of the view that since the shipment was started from the country of export on 08.12.2023, much prior to the imposition of ADD on this item, ADD is not applicable on this item.*
- *On being asked to specify the reason for change in CTH of the item imported vide BE No 9534484 dated 04.01.2024 in the BE vis-à-vis BL and COO Certificate from HSN-85158090 to HSN-84561100, he stated that vide this BE, they have imported Fiber Laser Welding Machine Model SF-3000HWM with relevant accessories. He shown his agreement that there was mis match in the description and HSN of the imported on the BE vis-à-vis BL and COO Certificate in as much as on the BE, the description of the imported item was Fiber Laser Welding Machine with HSN-84561100, whereas on the BL and COO, the description of the imported item was Laser Welding Machine with HSN-85158090.*
- *On being asked to clarify as to why the goods of HSN- 85158090 was imported under the EPCG license despite of the fact that the HSN-85158090 was not mentioned in the list of items sought to be imported*

duty free under the EPCG authorization, he has categorically stated that they have imported Laser Welding Machine under the EPCG Scheme license 13EAEP02312AM24 dated 20.12.2023. They have applied for EPCG license for the said item also but now on being shown, he noticed that that HSN-85158090 was not mentioned in the list of items sought to be imported duty free under the said authorization.

- *that they applied for EPCG license for import of Laser Welding Machine. The said item was mentioned at Sr. no. 10 of the list of items sought to be imported duty free under the said authorization. However, he shown his agreement that the HSN code of the item to be imported as per EPCG license was 84561100 which they have mentioned in the BE, but the HSN code mentioned on the BL and COO of the said items was 84561100 and this HSN code was not mentioned on the list of items sought to be imported duty free under the said authorization.*
- *On being shown the relevant chapter headings of CTH-8456 and 8515 along with explanatory notes of these headings, he has categorically admitted that on congruent reading of chapter heading of 8456 & 8515 and corresponding Explanatory notes, the Laser cutting machines are classifiable under HSN-8456 whereas Laser welding machines are classifiable under HSN-8515.*
- *He further stated that they have done mistake while filing of BE for Laser Welding machine and altered the CTH of the goods from 85158090 as mentioned in the BL and COO to the HSN-84561100.*
- *On being asked as to why they have not levied ADD on the above item as the ADD is imposable on import of laser Welding machine from China under BE No.9534484 dated 04.01.2024, he stated that the said goods were boarded on ship from the exporting country on 08.12.2023. At the time of shipment, ADD was not applicable on this item, therefore, they were of the view that ADD will not be applicable on the import of this particular item. Therefore, at the time of applying EPCG license on 14.12.2023, they have not added the ADD portion in the duty saved value and accordingly, they have not considered the ADD value while debiting the Bond amount while filling the BE.*

15. In view of the above, it appears that Shri Manish Vaishnav, account manager and authorised person of the importer in his statement dated 01.02.2024 has categorically admitted that Laser welding machines imported under BE No. 9534484 dated 04.01.2024 is rightly classifiable under CTH-85158090 which is also mentioned in the BL & COO corresponding to the BE. Thus, it appears that the importer has changed the CTH to 84561100 at the filling of the BE on their own volition to make it eligible for import under EPCG licence available with them.

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

Customs Tariff Act, 1975, as amended:

SECTION 9A : Anti- dumping duty on dumped articles. -

(1) Where any article is exported by an exporter or producer from any country or territory (hereinafter in this section referred to as the exporting country or territory to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

(2) to (7)

(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

Customs Act, 1962, as amended:

SECTION 15. Date for determination of rate of duty and tariff valuation of imported goods –

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section];

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty.

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be

17. In view of the congruent reading of Section 9A of the Customs Tariff Act, 1975 as amended and Section 15 of the Customs Act, 1962, as amended, it appears that the relevant date for determination of ADD will be the date of presentation of the Bill of Entry or date of entry inward whichever is later. Therefore, in the instant matter, since the ADD was

already imposed vide Notification dated 22.12.2023, much prior to the date of entry inward, i.e. 06.01.2024, the date of filling of BE, i.e. 04.01.2024, the same is leviable in case of BE No. 9534483 dated 04.01.2024 & 9534484 dated 04.01.2024.

18. LEGAL PROVISION:

The Legal provisions of the Customs Act, 1962 ('Act' for the short) and Rules made thereunder relevant to the present matter are discussed herein under:

18.1 **SECTION 17** of the Act, prescribes that an importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

18.2 **SECTION 46** of the Act, prescribes that 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.

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

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

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

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

Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a

penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

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

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

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

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

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

- a. *is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*

- b. *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

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

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

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

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

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

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

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

19. In view of the above, it appears that:

(i) In case of BE No. 9534483 dated 04.01.2024, the goods, i.e. Fiber Laser Cutting Machine classified under CTH-84561100 having declared CIF value of Rs. 44,02,851/-, though eligible for import under the EPCG license no. 13EAEPC02312AM24 dated 20.12.2023 obtained by the importer, is liable for levy of ADD @ 147.20 % of the CIF value.

(ii) In case of BE No. 9534484 dated 04.01.2024 the goods, i.e. Fiber Laser Welding Machine having declared CIF value of Rs. 9,05,310/- and classified by the importer under CTH-84561100 in the BE is rightly classifiable under CTH-85158090 and hence not eligible for import under the EPCG license no. 13EAEPC02312AM24 dated 20.12.2023 obtained by the importer. Therefore, applicable Customs Duty is payable on such import. Furthermore, ADD @ 147.20 % of the CIF value is also leviable on the said imported good.

(iii) In case of BE No. 9534483 dated 04.01.2024, has contravened the provisions of Section 17 & 46 of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, in as much they failed to assess and determine the levy of Anti-Dumping Duty in terms of Notification No. 15/2023-Customs (ADD) dated 22.12.2023 on the imported goods, i.e. Fiber Laser Cutting Machine. These acts of omission and commission on the part of importer has made these goods valuing at Rs. 44,02,851/- is liable for confiscation under Section 111 (m) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

(iv) In case of BE No. 9534484 dated 04.01.2024, has contravened the provisions of Section 17 & 46 of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, in as much they failed to assess and determine the correct classification of the goods, i.e. Fiber Laser Welding Machine under CTH- 85158090 and also failed to determine their Customs duty under Section 17 of the Customs Act, 1962 as well as Anti-Dumping Duty in terms of Notification No. 15/2023-Customs (ADD) dated 22.12.2023 on the imported goods. These acts of omission and commission on the part of importer has made these goods valuing at Rs. 9,05,310/- liable for confiscation under Section 111 (m) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

20. In view of the above, it appears that the importer has also short levied the duty amounting to Rs. 83,25,071/- (BCD+SWS+ADC+IGST) in-case of these BEs, which is now required to be recovered along with interest by way of re-assessment of the BEs.

| Sr. No. | BE No. & date | Item description | CTH declared by the importer | CTH as per investigation | benefit of EPCG Scheme | CIF value | BCD | SWS | ADD @ 147 % of CIF value | Value for IGST | IGST | Total Duty as per Investigation (BCD+SWS+ADC+IGST) |
|---------|---------------|------------------|------------------------------|--------------------------|------------------------|-----------|-----|-----|--------------------------|----------------|------|--|
|---------|---------------|------------------|------------------------------|--------------------------|------------------------|-----------|-----|-----|--------------------------|----------------|------|--|

| | | | porter | gation | | | | | | | | SWS+IGS T+ADD) |
|-----|----------------------------------|---|--------------|--------------|-------------------|-----------|---------|--------|-----------|-----------|----------|-------------------|
| 1* | 9534483 d ated 04.01. 2024 | Fiber Las er Cuttin g Machin e | 84561 100 | 84561 100 | available | 4402851/- | 0 | 0 | 6480997/- | 0 | 0 | 6472119/- |
| 2** | 9534484 d ated 04.01. 2024 | Fiber Las er Weldin g Machin e | 84561 100 | 85158 090 | Not avail able | 905310/- | 90531/- | 9053/- | 1332616/- | 2337510/- | 420752/- | 1852952/- |
| | | | | | | 5308161/- | 90531/- | 9053/- | 7813613/- | | 420752/- | 8325071/- |

* In case of BE No. 9534483 dated 04.01.2024, since benefit of import under EPCG license is available, hence BCD, SWS & IGST is Nil.

** In case of BE No. 9534484 dated 04.01.2024, since benefit of import under EPCG license is not available, hence BCD, SWS & IGST is calculated on applicable rate and value.

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

The importer vide letter dated 02.02.2024 has requested to permission to allow re-export of the goods imported vide above said both BEs as it is not possible for them to pay ADD @ 147.20% of the value of the consignment as it will make the consignment worthless for them. Further, vide letter dated 08.04.2024, the importer has requested for waiver of the Show Cause Notice and Personal Hearing and adjudication of the matter without SCN.

22. In view of the above, it appears that:-

(i) In case of BE No. 9534483 dated 04.01.2024, goods, Fiber Laser Cutting Machine having CIF value of **Rs. 44,02,851/-** is liable for confiscation under Section 111 (m) of the Customs Act, 1962. The ADD @ 147.20% of CIF value is also leviable on the said imported good vide BE No. 9534483 dated 04.01.2024. Total Differential duty is **Rs. 64,80,997/- (ADD)**.

(ii) In case of BE No. 9534484 dated 04.01.2024, the declared classification, CTH-84561100 of imported goods, i.e. Fiber Laser Welding Machine, is liable to be rejected for the reasons discussed in para supra and rightly classifiable under CTH-85158090. Benefit of duty-free import under EPCG license no. 13EAEP02312AM24 dated 20.12.2023 is liable to be denied in case of BE No. 9534484 dated 04.01.2024 for the reasons discussed in para supra.

(iii) In case of BE No. 9534484 dated 04.01.2024, the goods, Fiber Laser Welding Machine having CIF value of **Rs. 9,05,310/-** is liable for confiscation under Section 111 (m) of the Customs Act, 1962. Applicable Customs Duty along with ADD @ 147.20 % of

the CIF value is leviable on the said imported good. Total Differential duty is **Rs. 18,52,952/- (BCD+SWS+ADC+IGST)**.

(iv) Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

Discussions and Findings

23. I have gone through the facts of the case, legal provisions, statements and submissions made by the importer. The importer vide their letter dated 08.04.2024, has requested for waiver of the Show Cause Notice and Personal Hearing and has requested for adjudication of the matter without SCN. I therefore believe that the procedure as laid down Section 122A of the Customs Act, 1962 has been complied with.

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

- i. Whether ADD @ 147.20 % of the CIF value should be levied on goods covered under **BE No. 9534483** dated 04.01.2024, i.e. Fiber Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 44,02,851/-**, which are being imported under the EPCG license no. 13EAEPC02312AM24 dated 20.12.2023.
- ii. Whether the goods covered under **BE No. 9534484** dated 04.01.2024 i.e. Fiber Laser Welding Machine having declared CIF value of **Rs. 9,05,310/-** and classified by the importer under CTH-84561100 is rightly classifiable under CTH-85158090 .
- iii. Whether the goods covered under **BE No. 9534484** dated 04.01.2024 i.e. Fiber Laser Welding Machine having declared CIF value of **Rs. 9,05,310/-** eligible for import under the EPCG license no. 13EAEPC02312AM24 dated 20.12.2023 obtained by the importer or applicable Customs Duty is payable on such import. Further whether ADD @ 147.20 % of the CIF value is also leviable on the said imported good.
- iv. Whether the goods covered under **BE No. 9534483** dated 04.01.2024, i.e. Fiber Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 44,02,851/-** is liable for confiscation under section 111(m) of the Customs Act, 1962
- v. Whether the goods covered under **BE No. 9534484** dated 04.01.2024 i.e. Fiber Laser Welding Machine having declared CIF value of **Rs. 9,05,310/-** is liable for confiscation under section 111(m) of the Customs Act, 1962
- vi. Whether the importer is liable to be penalized under section 112(a)(ii) of the Customs Act, 1962
- vii. Whether the goods can be permitted to be re-exported as has been requested by the importer.

Applicability of ADD on goods imported under EPCG Lic

25. The ADD is imposed under **Section 9A of the Customs Tariff Act** read with Rules 18 & 20 of the Customs Tariff (Identification, Assessment and collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

26. Vide **Notification No. 26/2023-CUSTOMS dated 01.04.2023**, the EPCG scheme under Foreign Trade Policy, 2023 has been implemented vide which import of capital goods have been exempted from the

- i. whole of the **duty of customs** leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and
- ii. the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3 of the Customs Tariff Act, when specifically claimed by the importer;
- iii. the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-sections (7) and (9) of section 3 of the Customs Tariff Act.

27. Further, the exemption under this notification shall be subject to the following conditions, namely: -

(1) that the goods imported are covered by a valid authorisation issued under the Export Promotion Capital Goods (EPCG) Scheme in terms of Chapter 5 of the Foreign Trade Policy permitting import of goods at zero customs duty.

(2) that the authorisation is registered at the port of import specified in the said authorisation and the goods, which are specified in the Table 1 annexed to the authorisation, are imported within validity of the said authorisation and the said authorisation is produced for debit by the proper officer of customs at the time of clearance.

28. Upon parallel and concurrent reading of applicability of ADD and exemption from payment of duty under EPCG scheme, it is noticed that the ADD imposed under Section 9A of the Act, *ibid* is not exempted under the EPCG Scheme and applicable ADD, if any is payable on the capital goods imported under EPCG scheme.

29. Further, the importer has contended that when the goods were loaded from the exporting country, i.e. on 08.12.2023, there was no ADD applicable on these goods, as the same was imposed vide notification dated 22.12.2023. Therefore, they did not levy the same at the filling of BoE. In this regards the Section 15 of the Customs Act, 1962 outlines the relevant date determination of the rate of duty and tariff valuation for imported goods in various scenarios. These scenarios are enumerated below:

Goods Entered for Home Consumption (Section 46): The rate of duty and tariff valuation applicable to goods entered for home consumption under section 46 will be based on the date on which a bill of entry for those goods is presented under that section.

Goods Cleared from a Warehouse (Section 68): For goods cleared from a warehouse under section 68, the rate of duty and tariff valuation will be determined based on the date on which a bill of entry for home consumption in respect of those goods is presented under that section.

Other Goods: For any other goods, the rate of duty and tariff valuation will be determined based on the date of payment of duty.

The provision also includes a proviso stating that if a bill of entry has been presented before the date of entry inwards of the vessel, or the arrival of the aircraft or vehicle by which the goods are imported, the bill of entry will be considered as presented on the date of such entry inwards or arrival, respectively.

30. Here it is seen that both the Bills of entry u/s 46 of the Customs Act, 1962 were filed on 04.01.2024 while the entry inward was granted on 06.01.2024. Both these events are way later than date 22.12.2023 on which ADD Notification No. 15/2023-Customs (ADD) imposing ADD on the impugned goods was notified. As such ADD was applicable on the goods mentioned in the notification for which Bill of Entry was filed on/after 22.12.2023 and entry inward was granted on/after 22.12.2023.

**HSN Classification of Goods covered under under BE No. 9534484 dated 04.01.2024
i.e. Fiber Laser Welding Machine**

31. The classification of the goods under ITC- HS is to be done following the General Rules of Interpretation as per which.

Classification of goods in this Schedule shall be governed by the following principles:

1. *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*
2. *(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled ...*

32. In the instant case the goods have been declared as 'Fiber Laser Welding Machine' in the Bill of Entry. 9534484 dated 04.01.2024 and they have been classified under CTH 8456 11 00 *On examination, the goods were found to be 'Fiber Laser Welding Machine' as well hence the description of the goods matches with the actual machine. However the description of CTH 8456 11 00 apparently does not corresponds to the goods.*

33. As per the Schedule I of ITC HS, the Heading 8456 covers the following

8456 MACHINE-TOOLS FOR WORKING ANY MATERIAL BY REMOVAL OF MATERIAL, BY LASER OR OTHER LIGHT OR PHOTON BEAM, ULTRA-SONIC, ELECTRO-DISCHARGE, ELECTRO-CHEMICAL, ELECTRON BEAM, IONIC-BEAM OR PLASMA ARC PROCESSES; WATERJET CUTTING MACHINES

– Operated by laser or other light or photon beam processes:

8456 11 00 – Operated by laser

An elaboration of this description can be found in Explanatory Notes to HSN published by World Customs Organisation and the relevant excerpt is as reproduced below

EXPLANATORY NOTES:

8456- MACHINE-TOOLS FOR WORKING ANY MATERIAL BY REMOVAL OF MATERIAL, BY LASER OR OTHER LIGHT OR PHOTON BEAM , ULTRA-SONIC, ELECTRO-DISCHARGE, ELECTRO-CHEMICAL, ELECTRON BEAM, IONIC-BEAM OR PLASMA ARC PROCESSES; WATERJET CUTTING MACHINES

C. Machine Tools for Working by Laser or other light of photon beam process-

Laser-beam machining (photonic machining) consists of bombarding a target with photon. This group covers, in particular, machines for drilling (metals, rubies for watches etc.), machines for cutting metals or other hard materials and machines for engraving (figures, letters, lines etc.) on various highly resistant materials.

D. To (C)

The heading also excludes:

- d. Ultrasonic apparatus for cleaning (heading 84.79)
- e. Soldering, brazing or welding machines and apparatus, whether or not capable of cutting (heading- 85.15)
- f. Testing Machines (heading 90.24)

34. It can be seen that The Explanatory Notes to Heading 8456 specifically excludes *Soldering, brazing or welding machines and apparatus, whether or not capable of cutting and suggests their heading as 8515)*

Upon examining Heading 8515, it is seen that 8515 covers the following;

CHAPTER HEADING: 8515

8515 ELECTRICS (INCLUDING ELECTRICALLY HEATED GAS), LASER OR OTHER LIGHT OR PHOTON BEAM, ULTRASONIC, ELECTRON BEAM, MAGNETIC PULSE OR PLASMA ARC SOLDERING, BRAZING OR WELDING MACHINES AND APPARATUS, WHETHER OR NOT CAPABLE OF CUTTING; ELECTRIC MACHINES AND APPARATUS

FOR HOT SPRAYING OF METALS OR CERMETS

| | |
|------------|--|
| 8515 80 | - Other machines and apparatus: |
| 8515 80 10 | --- High-frequency plastic welding machine |
| 8515 80 90 | --- Other |

EXPLANATORY NOTES:

8515 *ELECTRICS (INCLUDING ELECTRICALLY HEATED GAS), LASER OR OTHER LIGHT OR PHOTO BEAM, ULTRASONIC, ELECTRON BEAM, MAGNETIC PULSE OR PLASMA ARC SOLDERING, BRAZING OR WELDING MACHINES AND APPARATUS, WHETHER OR NOT CAPABLE OF CUTTING; ELECTRIC MACHINES AND APPARATUS FOR HOT SPRAYING OF METALS OR CERMETS*

8515.80- *Other machines and apparatus:*

II. Soldering, brazing or welding machines and apparatus

B. To (F)....

(G) *Machines and apparatus for photon beam for welding, whether or not capable of cutting-
Photon beam welding may be divided into:*

3. Laser beam welding:

4. Light beam welding:

The Heading also excludes:

- f.** *Packaging machines fitted with electric welding appliances (heading 84.22)*
- g.** *Fusing presses (heading 84.51)*
- h.** *Machines Designed exclusively for cutting (generally heading 84.56)*
- i.** ..
- j.** ...

35. On comparative and parallel reading of Heading of 8456 & 8515 and corresponding Explanatory notes as reproduced above, I am of the opinion that the Laser cutting machines are rightly classifiable under HSN-8456 11 00, whereas Laser welding machines are classifiable under HSN-8515 80 90.

Eligibility of goods covered under BE No. 9534484 dated 04.01.2024 i.e. Fiber Laser Welding Machine for import under the EPCG license vs Customs Duty is payable on such import

36. The EPCG scheme broadly allows duty free import of capital goods covered under a valid authorisation issued by Directorate General of Foreign Trade (DGFT) subject to condition that licence holder shall export a predefined quantum of goods produced with the help of the imported goods covered under the licence. A detailed notification bearing

Notification No. 26/2023- Customs dated 01.04.2023 has been issued by CBIC in this regard.

37. In the instant case it is seen the goods "*Laser Welding Machine*" is mentioned at Sr. no. 10 of the list of items sought to be imported duty free under the EPCG authorization issued to the importer. However, the HSN code of the item to be imported as per EPCG license is mentioned as 84561100

38. As discussed above, the item Laser Welding Machine is rightly classifiable under 8515 80 90. This CTH 8515 80 90 is not mentioned in the list of items sought to be imported duty free under the said authorization. As long as the EPCG lic is not amended to show the correct CTH, the benefit of duty exemption will not be available to the importer. As such I hold that the importer cannot claim exemption from payment of duty on the goods covered under **BE No. 9534484 dated 04.01.2024 i.e. Fiber Laser Welding Machine** will need to pay the same.

Confiscation of goods covered under the *Bill of Entry* No. 9534483 dated 04.01.2024 and *Bill of Entry* No. 9534484 dated 04.01.2024

39. The Section 111 of the Customs Act , 1962 provides for scenarios under which imported goods can be confiscated. One of the scenarios is that

" any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54."

40. I find that while filing the Bill of Entry No. 9534483 dated 04.01.2024, i.e. Fiber Laser Cutting Machine classified under CTH-84561100 having declared CIF value of Rs. 44,02,851/-, being imported under the EPCG license no. 13EAEPC02312AM24 dated 20.12.2023., the importer has not declared and self-assessed the Anti-Dumping duty which was applicable on the goods covered under said B/E. Therefore I hold that the goods covered under the *Bill of Entry* No. 9534483 dated 04.01.2024 is liable for confiscation.

41. Further, it is also seen that at the time of filing the BE No. 9534484 dated 04.01.2024 i.e. Fiber Laser Welding Machine for import under the EPCG license, the importer not only changed the CTH of the goods from 8515 80 90 as mentioned in the Bill of Lading and COO to 8456 11 00, but also did not declare and self-assess the Anti- Dumping duty which was applicable on the goods covered under said B/E. Therefore, I

hold that the goods covered under the Bill of Entry No. 9534484 dated 04.01.2024 is liable for confiscation.

Penalty

42. The acts of commission and omission as discussed above, if allowed to pass, would have resulted in non-payment of Anti-Dumping duty and Customs duty to the tune of 83,25,071/-. In the era of self-assessment, where the Government is placing increased trust in importers and encouraging them by increased facilitation it is rightfully expected that the importers exercise due diligence while filing Bills of Entry keeping them abreast of all the newest developments with regards to imposition and applicability of duty. The importers are not expected to be ignorant of the specifications, quantum, event on which applicability of duty is dependent. Such ignorance in applicability of Anti-Dumping Duty at the time of filing the Bill of Entry No. 9534483 dated 04.01.2024 and deliberate mis-declaration of CTH of goods at the time of filing Entry No. 9534484 dated 04.01.2024, along with non- applicability of ADD has led to goods to be liable for confiscation under Section 111 of the Customs Act, 1962.

43. The Section 112 of the Customs Act, 1962 states that any person, *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act is liable to, in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.* Therefore, I only find it fit to impose penalty on the importer as laid down in the Act.

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

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

45. As I have held that goods can be redeemed for re-export I find it proper to discuss on the quantum of redemption fine and penalty in the matter. The goods are not being allowed for home consumption so as to derive any benefits out of it by the importer. There is absolutely no margin of profit for the importer warranting imposition of heavy redemption


fine to wipe it out the margin. Further I find that importer needs to pay heavy detention and demurrage charges and also incur expenditure on arranging re-export. Under such circumstances I deem it fit to take a lenient view in deciding the quantum of redemption fine and penalty.

46. In view of the above discussions, I pass following order-

ORDER

- i. I order levy of ADD @ 147.20 % of the CIF value on goods covered under BE No. 9534483 dated 04.01.2024, i.e. Fiber Laser Cutting Machine classified under CTH-84561100 having declared CIF value of Rs. 44,02,851/-, which are being imported under the EPCG license no. 13EAEPC02312AM24 dated 20.12.2023.
- ii. I order levy of ADD @147.20% of CIF value on goods covered under BE No. 9534484 dated 04.01.2024 i.e. Fiber Laser Welding Machine having declared CIF value of Rs. 9,05,310/-.
- iii. I order re-classification of the goods covered under BE No. 9534484 dated 04.01.2024 i.e. Fiber Laser Welding Machine having declared CIF value of Rs. 9,05,310/- from CTH-84561100 to CTH-85158090. I further order re-assessment of duty of the goods covered under BE No. 9534484 dated 04.01.2024 under merit rate of duty.
- iv. I hold the goods covered under BE No. 9534483 dated 04.01.2024, i.e. Fiber Laser Cutting Machine having declared CIF value of Rs. 44,02,851/- and BE no. 9534484 dated 04.01.2024 i.e. Fiber Laser Welding Machine having declared CIF value of Rs. 9,05,310/- liable for confiscation under section 111(m) of the Customs Act, 1962.
- v. I impose a penalty of Rs. 2,50,000/-(Rs. Two lakh Fifty Thousand Only) under section 112(a)(ii) of the Customs Act, 1962 on the importer M/s Angira Art Export (IEC-1305031164) situated at E-97, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001
- vi. I give the importer an option to re-export the goods on payment of Redemption fine of amount Rs. 5,00,000/-(Rs. Five Lakh Only) in lieu of confiscation in terms of section 125 of Customs Act, 1962 as ordered above.

46. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the CA 1962 and rules /regulation framed thereunder or any other law for the time being in force in the republic of India.


23/06/2024
(Arun Kumar)

**Additional Commissioner of Customs Import,
Mundra Customs House.**

To,

1. M/s Angira Art Export (IEC-1305031164) situated at E-97, Mandore Industrial Area, Mandore, Jodhpur, Rajasthan-342001

Copy to

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

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