

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
---	--	---

A	फा. सं./FILE NO.	F. No. GEN/ADJ/ADC/2004/2023-Adjn
B	मूल आदेश संख्या/ ORDER- IN-ORIGINAL NO.	MCH/ADC/AKM/318/2024-25
C	द्वारा पारित किया गया / PASSED BY	अमित कुमार मिश्रा अपर आयुक्त, सीमा शुल्क, सीमा शुल्क भवन, मुन्द्रा
D	आदेश की तिथि DATE OF ORDER	25.02.2025
E	जारी करने की तिथि DATE OF ISSUE	25.02.2025
F	कारण बताओ नोटिस संख्या & तिथि SCN NUMBER & DATE	GEN/ADJ/ADC/2004/2023-Adjn O/o Pr Commr-Cus-Mundra dt. 19.10 .2023
G	आयातक / नोटिस प्रापकर्ता IMPORTER / NOTICEE	1. M/s. Jishan Impex 2. M/s O.K. Cargo Craft Pvt. Ltd.
H	DIN NUMBER	20250271MO000000D7C2

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकता है-

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

सीमाशुल्कआयुक्त) अपील,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

**HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR
BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्तअपील यहआदेश 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 be 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 सं०-6 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 ऊँटि/ 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.

. 6अपील प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982और 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 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.

BRIEF FACT OF THE CASE:-

Intelligence gathered by the Directorate of Revenue Intelligence (DRI), Gandhidham Regional Unit suggested that M/s Jishan Impex, Plot No. 2/1/86-2,

Kanthawala Naka, Mundra - 370421, Gujarat (IEC No. AARFJ2231P)(hereinafter referred to as "M/s Jishan Impex/the Importer") were illegally importing 'Old and Used Tyres' of various sizes falling under CTH No. 40122090 of Customs Tariff. Cargo related to some Bills of Entry filed in the name of M/s Jishan Impex were examined by DRI, however, the investigation related to Bill of Entry No. 5607677 dated 21.04.2023 filed at Mundra Custom House was done by DRI and other were transferred to Mundra Custom House for necessary action (**RUD No.1**). The intelligence further indicated that M/s Jishan Impex has imported these goods declared as 'Old and Used Tyres ADV Purpose' by way of undervaluation and without proper license as prescribed under Para 2.31 Sl. No. II of Foreign Trade Policy 2023. The import policy conditions under para 2.31 of the Foreign Trade Policy 2023 reads as under:

□

2.1 Acting on the intelligence, investigation was initiated by DRI with respect to the subject consignment and the goods contained in container No. MSCU9453690 covered Bill of Entry No. 5607677 dated 21.04.2023 were examined vide Panchnama dated 13.05.2023 drawn at CFS premises of M/s MICT CFS, Mundra. (**RUD No. 2**). During the panchnama proceedings, Shri Sunil Joiser, 'G- Card' Holder of M/s O. K. Cargo Craft Pvt. Ltd. (Customs Broker) and Shri Hiren Chauhan, Employee of one M/s Cargo Corp Logistics was also present. Shri Sunil Joiser and Shri Hiren Chauhan informed during panchnama proceedings that M/s O. K. Cargo Craft Pvt. Ltd. was appointed as Customs Broker by the importer and Shri Hiren Chauhan was looking after entire work relating to clearance of import consignments pertaining to the said importer. During the course of examination, it was noticed that there were different sizes of rubber tyres starting from 12 inches to 17 inches. Rubber tyres of the smaller sizes were placed inside the tyres having higher sizes such as 13 inches and more sizes up to 17 inches, were containing lesser size tyres and thus were bunches of two to four tyres in one higher size tire. The rubber tyres were having popular brand names of various manufacturers such as Bridgestone, Yokohama, Dunlop, Good Year, etc. and *prima facie* the rubber tyres were appearing to be used in Motor Cars and Light Commercial Vehicles. During the panchnama proceedings, total 3527 pieces were physically found against the declared quantity of 3312 pieces. The panchnama proceedings were closed in view of the further expert opinion required to ascertain the new and/or old and/or used and/or unused condition which was technical in nature.

2.2. The said goods were again examined vide panchnama dated 30.05.2023 wherein Shri Bhaskar G. Bhatt, Engineer/Surveyor/Govt. Approved valuer from M/s B.G. Bhatt & Co. and his associate were present to conduct necessary inspection of the subject goods. Bhaskar G. Bhatt and his associate inspected the stacks of rubber tyres one by one visually and took photographs of the same in the presence of Panchas and informed that he would issue his report regarding nature/condition/value/specification of the subject goods in due course. (**RUD No. 3**)

3. During investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962, which are briefly discussed herein-below:

3.1 Statement of Shri Hiren Chauhan, Employee of M/s Cargo Corp. Logistics, Baroi Road, Opposite Arihant Marble, GIDC Mundra (Kutch), was recorded under Section 108 of the Customs Act, 1962 on 19.04.2023 (**RUD No. 4**) and 04.10.2023 (**RUD No. 5**) wherein he inter alia stated that;

- That his firm is engaged in business activities of Customs clearance at Mundra port

using the custom broker license of Customs Broker company M/s O. K. Cargo Craft Pvt. Ltd., Second Floor, Mundhra CFS, APSEZ Mundra (Registered at Mumbai and Mundra).

- That his firm pay Rs. 10,000 per container to Sunil Joiser of M/s O. K. Cargo Craft Pvt. Ltd. in lieu of using his custom broker license for clearance of consignments from customs.
- That he got the customs related work of M/s Jishan Impex since last 8 to 9 months.
- That declared owner proprietor as per IEC records is Shri Kakal Jusab Illiyash while actual beneficiary is Sri Mihir Bhai of Indore.
- That his firm has charged rupees 80 per piece/tyre from the importer for clearance of the consignments of rubber tyres.
- That Sunil Joiser finalizes the filing of bill of entry on behalf of the importer and as per his knowledge, no approval of checklist for filing or bill of entry is obtained from the importer.
- That the importer does not possess any license/authorization required under Para 2.31 of Chapter 2 of Foreign Trade Policy, 2015.
- That his consignments pertaining to Old and Used rubber tyres are generally cleared on the basis of Hon'ble High Court of Gujarat judgment wherein such import has been allowed that's why his firm used to file bill of entry for customs clearance for importers.
- That he has declared Old and Used tyres for ADV purpose on the basis of Commercial and packing list provided by the importer.

3.2 Statement of Shri Sunil Navin Joiser, Employee & 'G Card' Holder of M/s O. K. Cargo Craft Pvt. Ltd., Second Floor, Mundhra CFS, Office No. 2, APSEZ Mundra, Kutch, Gujarat was recorded under Section 108 of the Customs Act, 1962 on 04.08.2023 (RUD No. 6) wherein he inter alia stated that;

- That he is 'G card' holder of Customs Broker firm M/s O. K. Cargo Craft Pvt. Ltd.
- That he has also his own business activities viz. Warehousing, Transportation and Forwarding services in name of M/s Shree Ashapura Clearing House Pvt. Ltd.
- That he got the work of the importer through Shri Yogesh Thakkar, Owner of the M/s Cargo Corp Logistics.
- That he finalized the work with one Shri Mihir of Indore who came to his office in the month of Oct-Nov, 2022 and finalized the deal of clearance of rubber tyres from Customs Mundra.
- That he was sending checklist before filing of bill of entry to the forwarder firm M/s Cargo Corp Logistics.
- That his company representative was present during the Chartered Engineer verification of the import consignment.
- That the tyres can be utilized as such without any re-threading.
- That he was aware of the EXIM policy and also explained to the clients.
- That he has no authority claiming that the tyres are capable for usage for Animal Driven Vehicles only.

3.3 Statement of Shri Kakal Jusab Illiyash, Partner of M/s Jishan Impex, Plot No. 2/1/86-2, Kanthawala Naka, Mundra - 370421, Gujarat was recorded under Section 108 of the Customs Act, 1962 on 04.09.2023 (RUD No. 7) wherein he inter alia stated that;

- That he is partner of M/s Jishan Impex, Mundra.
- That there are total two partners in the M/s. Jishan Impex.
- That the other partner is Shri Sabbir Jusab Kakal who is his elder son.
- That all decisions are taken by him only.

- That his firm is engaged in import of old & used rubber tyres and further sale in wholesale to domestic customer majorly M/s Sachdev Enterprise, Indore.
- That prior to GST, he was engaged in trading of old & used tyres wherein he used to import old & used tyres to further sale them at domestic market under his erstwhile M/s Eagle Impex. However, he closed M/s Eagle Impex around 2013 after operating for around five years.
- That he is also engaged in business related to brokerage of land/plot in and around Mundra area along with transport/ logistics business.
- That being local of Mundra, he was familiar with Hiren bhai and Mukesh bhai of M/s O.K. Cargo Craft Pvt Ltd., Mundra, his customs broker. Till he has imported 14 containers of old & used rubber tyres out of which last 4 containers were under lying at CFS due to litigation including one container covered under Bill of entry No. 5607677 dated 21.04.2023.
- That the customs broker used to inform him about the customs duty amount after filing of the bills of entry which was finally deposited by his firm.
- That in the present BE No. 5607677 dated 21.04.2023, the value range per tyre is from 1.50 USD/tyres to 3.50 USD/ tyre for various sizes which was declared on import documents.
- That the rate of tyres are decided by exporter after some bargaining between them.
- That he used to sell old & used tyres in wholesale to M/s. Sachdev Enterprise, Indore and end use of the tyres does not matter for his firm and he cannot ensure at the time of sell that it will be used in ADV only.
- That tyres can be utilized in as is condition without re-threading.
- That he has no DGFT certificate/license for import of old & used tyres.
- That he has no such authority to claim that the tyres are capable for usage for animal driven vehicles only.

4. M/s B. G. Bhatt & Co. vide their report Ref. BB/E-31.3/23/Jishan Impex/MUNDRA/DRI dated 18.07.2023 provided opinion in respect of subject imported consignment of Rubber Tyres. **(RUD No. 8)** The report was given in respect of declared no. of tyres in Bill of Entry No. 5607677 dated 21-Apr-2023. The said Inspection reports is reproduced as below:

- *The tyres were of various brands and sizes were also different.*
- *Different tyres has different diameters which was cross checked with the embossed number upon the tyres.*
- *There were more than one tyre put in the bigger to smaller sized tyres.*
- *As it was not possible to segregate the received tyres for make and size of tyres, it was considered on average basis for size, make, brands to estimate value of the received tyres.*
- *Same diameter tyres with different or identical prefix number conveying width and aspect ratio of the tyre was also observed.*
- *Most of the tyres were noticed with special trades suitable for the winter road condition, these trades offers more surface area as well as better grip in the snow / water covered roads hence the usage is pertaining to half of the year accordingly tyres suffered lesser depreciation. The protruded molding runners were also legible suggest the usage of the tyres as sparingly used, accordingly depreciation is estimated as per our knowledge and experience.*
- *The Details available for the verification of randomly selected tyre were sufficient for arriving to the conclusion about the type and application of the tyre for the usage for*

ADV or for any other purpose.

- *None of the tyres was noticed as retreaded (New rubber strap with grip trade on warned out old tyre)*

After the said inspection, M/s B. G. Bhatt & Co. vide their report dated 18.07.2023 has opined as below:

1. *Total 3312 tyres are imported out of which ZERO tyres are suitable for ADV (Animal Drawn Vehicle).*
2. *These all 3312 tyres can be used for Motorized vehicle.*
3. *The old and used tyres were not older than 2-3 years.*
4. *In lieu of YOM, based upon visual condition and bristles present upon the side surface of tyres as the imported tyres are winter tyres, average total depreciation for 2 years as 25.33% is estimated.*
5. *Rate mentioned in the enclosed annexure is estimated after adjusting rates of similar type and size of tyres as available on public domain after deducting taxes as well as depreciation etc.*

The rates of various brands were analyzed by M/s B. G. Bhatt & Co., Chartered Engineer/Government approved valuer and average rates were calculated as below:

Size	Pirelli	Michelin	Yokohama	Bridgestone	Continental	Average rate Rs.	Average FOB rate Rs.	Average Depreciated rate Rs.
12"		3225				3225	2768.24	2067.05
13"		4295	3380			3838	3294.42	2459.94
14"		6220				6220	5339.06	3986.67
15"		6540		5300		5920	5081.55	3794.39
16"	9836	7210	14780	6700		9632	8267.81	6173.57
17"	13199		12220		9099	11506	9876.39	7374.70
18"	19756	17470	16999		19245	18368	15766.52	11772.86
19"	23217	25540	19215		19345	21829	18737.34	13991.17
20"	29817		48815		23225	33952	29143.35	21761.34

The value of the imported cargo was calculated by M/s B. G. Bhatt & Co., Chartered Engineer/Government approved valuer as given under:

SR. No	Size in Inch	Tyres QTY	Average Dep. Rate Rs.	Estimated Depreciated value (in Rs.) of Tyres @ 74.67%
1	12"	661	2067.05	1366317
2	13"	1035	2459.94	2546042
3	14"	474	3986.67	1889683
4	15"	936	3794.39	3551549

5	16"	130	6173.57	802565
6	17"	76	7374.70	560478
		3312		10716633

5. Seizure:

The tyres were found to mis-declared in terms of value and description as declared in Bill of Entry No. 5607677 dated 21.04.2023 and description and value provided by Government approved valuer M/s B. G. Bhatt & Co., Chartered Engineer/Government approved valuer and accordingly goods were seized as per Seizure Memo dated 31.08.2023 (**RUD No. 9**). Further the officers found that the value declared by the importer for tyres is Rs. 5,29,623/- (CIF) against Chartered Engineer's estimated market value (before taxes) of Rs. 1,07,16,633/-.

6. Rejection of transaction value of the imported goods and determination of the value of the import goods

As regards the value declared in the Bill of Entry, the importer did not produce any payment details to determine the value of the goods imported. Further, M/s B. G. Bhatt & Co., Chartered Engineer/Government approved valuer has mentioned in his report that none of the tyres are suitable for ADV i.e. Animal Driven Vehicle. As such the declared value appears to be not acceptable as transaction value and merits rejection in terms of Section 14 of Customs Act, 1962 read with Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since the goods are Old & Used and cannot be fully compared with similar/identical imports, their value appears to be determinable under Rule 9 (Residual method) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with sub-section (1) of Section 14 of Customs Act, 1962 and on the basis of objective and quantifiable data available in India. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

3. Determination of the method of valuation-

(1) *Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*

(2) *Value of imported goods under sub-rule (1) shall be accepted:*

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

i. do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5 (Transaction value of similar goods).-

(1) *Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:*

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) *The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.*

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule 7 of CVR, 2007.

Rule 7 of the CVR, 2007, stipulates that:-

(1) *Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -*

- (i) *either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;*
- (ii) *the usual costs of transport and insurance and associated costs incurred within India;*
- (iii) *the customs duties and other taxes payable in India by reason of importation or sale of the goods.*

(2) *If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.*

(3) (a) *If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.*

(b) *In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).*

Rule 8 of the CVR, 2007, stipulates that:-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

- (a) *the cost or value of materials and fabrication or other processing employed in producing the imported goods;*
- (b) *an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;*
- (c) *the cost or value of all other expenses under sub-rule (2) of rule 10.*

Rule 9 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of –

- (i) the selling price in India of the goods produced in India;*
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;*
- (iii) the price of the goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;*
- (v) the price of the goods for the export to a country other than India;*
- (vi) minimum customs values; or*
- (vii) arbitrary or fictitious values.*

As mentioned above, the declared value in the Bill of entry No. 5607677 dated 21.04.2023 is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant misdeclaration of goods. Accordingly, the value estimated by the Chartered Engineer/Government approved valuer M/s B.G. Bhatt & Co. and further estimated assessable value (in CIF) is given below in table. The assessable value is estimated after deducting various costs i.e. Customs Duty, transportation, Storage charges, profit margin on an average basis i.e. 40% of assessable value at the Port. Further, excess tyres were noticed in terms of numbers wherein 3527 pcs of tyres were found against declared quantity of 3312 pcs. During panchnama proceedings dated 13.05.2023, it was found that smaller size tyres were stuffed inside the higher size tyres and size wise counting could not be done due to unavailability of special equipment. Hence, pro rata price of total value given by Government approved valuer it is taken for excess 215 pcs of tyres. The average rate of one tyre comes to Rs. 3235.70/- Hence value of 215 tyres i.e. Rs. 6,95,676/- is added to ascertain new Market Value (before taxes)

Item Declared	Assessable Value in the BE (in INR) (CIF)	Market Value (Before taxes) determined by the Chartered Engineer (in INR)	Re-estimated Market Value (Before taxes) determined on the basis of excess tyres found (in INR)	Assessable Value (taking 40% deduction)
‘Old & Used Tyres ADV Purpose’	5,29,623	1,07,16,633/-.	1,14,12,309/-	81,51,649/-

Accordingly, the total assessable value of the 3527 Pcs of 'Old & Used tyres' imported under the Bill of Entry No 5607677 dated 21.04.2023 works out to Rs. 81,51,649/- (CIF).

7. Liability of imported goods for confiscation

It is apparent from the above that the importer has imported 3527 Nos. of Old & Used tyres without valid license in violation of Foreign Trade Policy and mis-declared the value and quantity in the import documents. Import of old and used tyres are restricted under Para 2.31 SL No. II of Foreign Trade Policy 2015-20. The import of second-hand goods other than capital goods requires DGFT Authorisation. The Importer has not produced any such authorization for the import of old and used tyres and thereby it appears that they have violated the provisions of Section 11 and 14 of the Customs Act, 1962. Hence, it appears that the 3527 Nos of imported 'Old & Used Tyres' (Estimated Assessable value **Rs. 81,51,649/-** as per C.E.'s report) are liable for confiscation under Section 111(d), 111(f), 111(l) & 111(m) of the Customs Act, 1962 read with 'Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992.

8. Relevant Legal provision

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

.....

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

.....

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

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

SECTION 112. Penalty for improper importation of goods, etc.- Any person, -

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

(b) 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.

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

9. Roles of various persons:

9.1 From the investigations carried out as narrated in foregoing paras, it is revealed that the importer M/s. Jishan Impex imported 'Old and Used Tyres' vide Bill of Entry No. 5607677 dated 21.04.2023 without valid license in violation of Foreign Trade Policy and mis-declared the value, description and quantity in the import document and thereby appears to have violated the provisions of Section 14 and Section 46 of the Customs Act, 1962. Hence, it appears that the 3527 Nos of imported 'Old & Used tyres' (Estimated CIF Value **Rs. 81,51,649/-** as per Chartered Engineer's report) are liable for confiscation under **Section 111(d), 111(f), 111(l) & 111(m)** of the Customs Act, 1962 read with Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992. From the above it also appears that the importer is liable for penal action under **Section 112(a)** and **Section 112(b)** of Customs Act, 1962. M/s Jishan Impex knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also liable to penalty under **Section 114AA** of the Customs Act, 1962.

9.2. The omission and commission on the part of M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker) who were knowingly concerned in importing 'Old and Used Tyres' vide Bill of Entry No. 5607677 dated 21.04.2023 without valid license in violation of Foreign Trade Policy have rendered themselves liable to penalty under **Section 112 (b)** of the Customs Act, 1962. M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker) knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other

related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore they are also liable to penalty under **Section 114AA** of the Customs Act, 1962.

10. Now, therefore,

10.1 M/s Jishan Impex, Plot No. 2/1/86-2, Kanthawala Naka, Mundra - 370421, Gujarat (IEC No. AARFJ2231P) are hereby called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra having office situated at office of the Pr. Commissioner of Customs, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 within 30 (thirty) days from the date of receipt of the notice, as to why:-

- i. the declared value of Rs. 5,29,623/- (CIF) for the declared 3312 Pcs of 'Old & Used tyres' imported under the Bill of Entry No. 5607677 dated 21.04.2023 should not be rejected under Rule 12 of Customs Valuation Rules, 2007 and determined as Rs. 81,51,649/- (CIF) under Rule 9 of Customs Valuation Rules, 2007 for actually imported 3527 pcs of 'Old & Used tyres'.
- ii. the 3527 Nos. of 'Old & Used tyres' valued Rs. 81,51,649/- (CIF) imported under the Bill of Entry No. 5607677 dated 21.04.2023 should not be confiscated under Section 111 (d), 111(f), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3 (3) of foreign Trade (Development and Regulation) Act, 1992.
- iii. penalty should not be imposed on the importer under Section 112 (a), 112(b) & 114AA of the Customs Act, 1962.

10.2 M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker), Second Floor,

Mundhra CFS, APSEZ Mundra, Kutch - 370421 is hereby called upon to show cause in writing to the Additional Commissioner of Customs, Customs House, Mundra having office situated at office of the Pr. Commissioner of Customs, 5B, Port User Building, Adani Ports & SEZ, Mundra, Kutch, Gujarat – 370421 within 30 (thirty) days from the date of receipt of the notice as to why:

- (a) Penalty should not be imposed on M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker) under Section 112(b) & 114AA of the Customs Act, 1962.

11. PERSONAL HEARING

11.1 Personal hearing in this regard was given to all the noticees on 01.12.2023 in response to which no one either from the importer nor from the CHA attended the PH. Further another PH was granted on 10.01.2024 and 15.02.2024 in response to which Shri Kakal Jusab Illiyash, Partner of M/s jishan Impex represented the importer and demanded re-examination & re-assessment of the goods and claimed that they are not liable for penal action under section 112(a), 112(b) & 114AA of the Customs Act, 1962. Shri Avinash Mishra (Customs broker), M/s O.K. Cargo Craft Pvt. Ltd. attended the PH on behalf of the CB and claimed that they are not liable for penal action under section 112(a), 112(b) &

114AA of the Customs Act, 1962.

11.2 Further, on account of change in the adjudicating authority another opportunity for PH were given to all the noticees on 14.02.2025 in response to which Shri Kakal Jushab Illiyash proprietor of M/s Jishan Impex represented the importer and Shri Sunil Navin Joiser, the G card holder, represented the CB in the PH. Shri Kakal Jushab Illiyash requested for the revaluation of the goods and Shri Sunil Navin Joiser pleaded his innocence in the case.

12. Defense Submission

12.1 M/s Jishan Impex vide their letter dt. 15.11.2023 made following submission :

At the outset we deny the allegation made against us in the subject Show Cause Notice dated 19.10.2023 regarding under valuation of the imported goods and also we are not accepting the valuation method adopted by the Customs Department based on the so called "Valuation Report" of the M/s. B.G. Bhatt, Engineer / Surveyor/Govt. Approved valuer.

The so called "Valuation Report" relied by the DRI & Customs Department is not at all trustworthy due to the below mentioned reasons:

(i) As per the RUD No.3, 'Bhaskar G. Bhatt and his associate inspected the stacks of rubber tyres one by one visually and took photographs of the same in presence of Panchas and informed that he would issue his report regarding nature/condition/value/specification of the subject goods in due course. The Panchnama dated 13.05.2023 was started at 12.15 Hrs. as mentioned in the Panchnama & concluded at around 17:30 hours. The DRI officer and Panchas completed examination of all the tyres destuffed & staked in CFS Area. They physically counted the tyres and they found 3527 Pcs. The DRI officers must have taken appx. 4 to 5 Hrs. in completing counting and examination of the Tyres covered under the present case i.e. B/E No. 5607677 dated 21.04.2023. where in panchnama dtd 13.05.2023 two bill fo entries tyres were counted in a short span of 5 to 6 hours which is illogical and finding of excess tyres is irrelevant. In the surveyor report there is no mention of time that when the surveyor started the work of inspection and when they finished. Now if we go into the details, the efficiency of the so called "Surveyor and his associate", they appeared to have done work beyond normal human capabilities as they had started the Inspection at after counting work and Examination of 3312 Pcs. tyres by DRI Officers. As per panchnama Dtu 30.05.2023 The Surveyor and his associate had inspected 06 containers at M/s.

Mundhra CFS, All Cargo CFS & MICT CFS, APSEZ, Mundra covered under Six Bills of Entries. Thus, they completed the Inspection of total 06 containers between 16:15 hours to 19:30 hours within the span of appx. 3 Hrs. Thus, the Survey work of one container (present case) must have been completed in appx. 30 minutes (Total 3 Hr. = 180 minutes / 6 container = 30 minutes). Thus, the Surveyor had inspected 3312 Tyres in 30 minutes at the speed of appx. 110 tyres per minute. This sounds totally illogical and hence non-acceptable.

(ii) As per the RUD No.2, the Surveyor and his associate inspected stacks of rubber tyres one by one and took photographs of the same in presence of panchas. Thus, they have inspected the stacks of the Tyres and took photographs only and not performed actual Inspection. Thus, the report is non-acceptable.

(iii) It is mentioned in the Panchnama dated 13.05.2023 that tyres of smaller size were placed inside the tyres having higher sizes. However, the Surveyor has just inspected the stacks and not inspected all the tyres by getting it separate. Thus, the surveyor report is not at all reliable and not depict the true characteristics of the cargo inspected by them. Thus, the report is non-acceptable.

(iv) The Surveyor's Opinion / Report is superficial and based on a few minutes of inspection and some photographs only. It took him appx 1.5 month to prepare the report (Date of Inspection on 30.05.2023 to Issuance of report on 18.07.2023) and that too far from the truth and without any concrete basis.

(v) The Surveyor has not inspected all the tyres and it is also mentioned in his opinion that 'As it was not possible to segregate the received tyres for make and size of the tyres, it was considered on average basis for size, make, brands to estimate value of the received tyres'. The Surveyor has given his opinion in a non-professional manner without actually carrying out inspection of the goods. He selected the tyres randomly and arrived at the conclusion. Thus, the report is non-acceptable.

(vi) The Surveyor has mentioned that the old and used tyres were not older than 2-3 years and that too without properly inspecting all the tyres. Whereas in fact maximum tyres are more than 3 years old. Thus, the report is not correct and hence cannot be accepted.

(vii) The Surveyor has nowhere mentioned the total life span of the tyres but estimated the depreciation for 2 years as 25.33% without any base.

(viii) The Surveyor has also opined regarding the Average Depreciation Rate of the tyres after giving the average depreciation rate of the tyres as 12.66% (25.33% / 2 Year). If this rate is considered correct, then each tyre is having a total life of 8+ years and this is not a real world situation. Thus, the Surveyor has not given his report on a real world / realistic situation but on some flimsy grounds and imaginations only and the same is not proper and acceptable.

The whole Show Cause Notice is issued on the basis of the Opinion/ Report of the Surveyor. However, from the above, it is clear that the Surveyor Opinion/ Report is without any basis and cannot be relied upon for the purpose of valuation of the goods in question.

Thus, we request your kindself to order re-inspection of the goods by some other Govt. approved surveyor to ascertain the correct estimate of the age of the tyre and actual value thereof.

Moreover, M/s. B.G. Bhatt, Surveyor in this case has opined on the value of the Old and used tyres based on his own calculation of depreciated value of the tyres and given opinion by multiplying the balance life of tyre with a similar new tyre in Indian Market ignoring the fact that these are Old and Used Tyres and its value cannot be compared with the new tyres just by deducting the depreciation as they are not useful in the country of export and its value can be considered in weight per Kg/ per Ton. The Customs Department is also supposed to take the value of the goods from

the NIDB database to arrive at the correct valuation of the imported goods. Thus, the method adopted by the Customs Department for assessment of the goods is not correct and proper and requires re-assessment of the goods after getting it re- inspected by some other Govt. Approved Surveyor.

In addition to the above, we pray your kindself to

- i. Complete the adjudication process at the earliest after ordering re-inspection and re-assessment on the basis of the same as we are incurring heavy charges on the goods due to the detention of the cargo for more than 6 months and also due to the decreasing life of the Tyres since they are lying in open plot.
- ii. Issue direction to the CFS & respective Shipping line for waiver of Ground Rent/Demurrage charges till the completion of adjudication proceedingssince the cargo is detained by DRI/ Customs Department.

iii. *For reference purpose we request to please go through the OIO passed for identical Goods by competent adjudicating authority in past.*

aa) BE No. 3511213 dtd 29.11.2022

OIO No. MCH/ADC/MK/123/2022-23 dtd 12.12.2022

Importer: New Santosh Tyres, Ahmedabad

bb) Bill of Entry No. 8843242 dtd 26.05.2022

OIO No. MCH/APR/50/RKC/ADC/G2/2022-23 dtd 23.06.2022

Importer: Bukhari Enterprises, Ahmedabad

cc) BE No. 2138535 dtd 24.08.2022

OIO No. MCH/APR/091/PMR/ADC/G2/2022-23 dtd 12.09.2022

Importer: Kadri Enterprises, Ahmedabad.

We will be highly obliged to your kindself for consideration of our above request for re-inspection of the goods by any other Govt. Approved Surveyor and subsequently based on that ordering re-valuation of the goods at the earliest also issuing order to CFS for waiver of charges.

13. Discussion and Findings

I have carefully gone through the records of the case. The submission dated 15.11.2023, record of personal hearing held on 01.12.2023, 10.01.2024, 15.02.2024 and 14.02.2025 and other available records. I find that in the present case principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record. The points to be decided in the instant case are: -

- i. The declared value of Rs. 5,29,623/- (CIF) for the declared 3312 Pcs of 'Old & Used tyres' imported under the Bill of Entry No. 5607677 dated 21.04.2023 should not be rejected under Rule 12 of Customs Valuation Rules, 2007 and determined as Rs. 81,51,649/- (CIF) under Rule 9 of Customs Valuation Rules, 2007 for actually imported 3527 pcs of 'Old & Used tyres'.
- ii. The 3527 Nos. of 'Old & Used tyres' valued Rs. 81,51,649/- (CIF) imported under the Bill of Entry No. 5607677 dated 21.04.2023 should not be confiscated under Section 111 (d), 111(f), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3 (3) of foreign Trade (Development and Regulation) Act, 1992.
- iii. Penalty should not be imposed on the importer under Section 112 (a), 112(b) & 114AA of the Customs Act, 1962.
- iv. Penalty should not be imposed on M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker) under Section 112(b) & 114AA of the Customs Act, 1962.

14. I find that the importer in his submission has contested and pointed out the valuation

report produced by the Govt. Approved Chartered Engineer during the investigation and further requested for re-inspection and re-assessment of the goods. In this regard, I find that for determining the assessable value under Rule 7 of the Customs Valuation Rules 2007, the services of Shri Bhaskar G. Bhatt, Engineer/Surveyor/Govt. Approved valuer from M/s B.G. Bhatt & Co. was availed, wherein Shri Bhaskar G. Bhatt and his associate inspected the stacks of rubber tyres one by one visually and issued his report regarding nature/condition/value/specification of the subject goods, further the report submitted by CE states that the total tyres having been imported out of which ZERO tyres are suitable for ADV (Animal Drawn Vehicle) and the rates have been estimated after adjusting rates of similar type and size of tyres as available on public domain after deducting taxes as well as depreciation etc. Thus, I find that the value of the imported cargo calculated by Chartered Engineer is proper and cannot be discarded. Therefore, I do not find any reason for re-inspection and re-assessment of the subject imported goods again.

15. Rejection of the value declared by the importer and redetermination of the same w.r.t. the goods imported by the BE No. 5607677 dated 21.04.2023

15.1 I find that importer M/s JIshan Impex and alloy wheels has filed a Bill of Entry No. 5607677 dated 21.04.2023 having declared assessable value of the goods are 5,29,623/- for clearance of goods declared as 'Old and Used Tyres ADV Purpose' rubber tyres starting from 12 inches to 17 inches. During investigation by DRI with respect to the subject consignment and the goods contained in container No. MSCU9453690 covered under Bill of Entry No. 5607677 dated 21.04.2023 were examined vide Panchnama dated 13.05.2023 drawn at CFS premises of M/s MICT CFS, Mundra.. The said goods were again examined vide panchnama dated 30.05.2023 wherein Shri Bhaskar G. Bhatt, Engineer/Surveyor/Govt. Approved valuer from M/s B.G. Bhatt & Co. and his associate were present to conduct necessary inspection of the subject goods. Bhaskar G. Bhatt and his associate inspected the stacks of rubber tyres one by one visually and took photographs of the same in the presence of Panchas and informed that he would issue his report regarding nature/condition/value/ specification of the subject goods in due course.

15.2. Upon examining, it has come to my attention that the value declared by the importer is significantly lower than the value ascertained by the Chartered Engineer. As a result, the declared value does not align with the standards set forth under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Consequently, the declared value has been deemed unacceptable and is rejected in accordance with Rule 12 of the aforementioned rules. The value of the goods has, therefore, been re-determined using the residual method under Rule 9, after sequentially applying the relevant provisions outlined in Rules 4 to 9.

15.3 In the light of this, I find that the declared values of the 3312 Nos. (actually imported 3527) of 'Old & Used tyres imported vide the Bill of Entry No. 5607677 dated 21.04.2023 is liable to be rejected as they constitute a gross misdeclaration of the imported goods. I also find that the value, as estimated by the Chartered Engineer and Government-approved

valuer, M/s B.G. Bhatt & Co., is based on a thorough assessment and reflects the true value of the goods in question and supersedes the original, under-reported declaration made by the importer. The same is as tabulated below:

Item Declared	Assessable Value in the BE (in INR) (CIF)	Market Value (Before taxes) determined by the Chartered Engineer (in INR) (for declared 3312 units)	Re-estimated Market Value (Before taxes) determined on the basis of excess tyres found (in INR) (For 3527 actually found units)	Assessable Value (taking 40% deduction)
'Old & Used Tyres ADV Purpose'	5,29,623/-	1,07,16,633/-.	1,14,12,309/-	81,51,649/-

16. Mis-declaration and liability to confiscation of imported goods of M/s Jishan Impex

16.1 The Section 111 of the Customs Act, 1962 provides for the following:

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

.....
(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

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

(m) any goods which do not correspond in respect of value or in any other particular] 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;

16.2. I find that the importer has imported total 3312 Nos. (actually imported 3527 Nos.) of Old & Used tyres in Bill of Entry No. 5607677 dated 21.04.2023 without valid license in violation of Foreign Trade Policy and mis-declaring the value, description and quantity in the import documents. Import of old and used tyres are restricted under Para 2.31 SL No. II of Foreign Trade Policy 2023. The import of second-hand goods other than capital goods requires DGFT Authorisation. The Importer has not produced any such authorization for the import of old and used tyres and thereby it appears that they have violated the provisions of Section 11 and 14 of the Customs Act, 1962. It is thus evident that the imported old and used tyres are not designed to be used for Animal Driven Vehicles (ADVs) hence the importer has deliberately mis-declared the description of goods and

value in order to evade customs duty and license restrictions.

16.2.1 Therefore, I find that the 3312 Nos. (actually imported 3527 Nos.) Nos of imported 'Old & Used Tyres' (Estimated Assessable value **Rs. 81,51,649/-** as per C.E.'s report) under Bill of Entry No. 5607677 dated 21.04.2023 imported without any valid license have rendered themselves as prohibited and are liable for absolute confiscation under Section 111(d), 111(f), 111(l) & 111(m) of the Customs Act, 1962 read with 'Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992.

17. Imposition of Redemption fine in lieu of confiscation of the goods under section 111(d), 111(f), 111(l) and 111(m) of the Customs Act,1962.

On plain reading of the provisions of the Section 111(d),111(f), and 111(m) of the Customs Act, 1962 (mentioned at Point no. 16.1) it is clear that the impugned goods were imported in violation of the Foreign Trade Policy and mis-declaring the value, description and quantity in the import documents. Import of old and used tyres are restricted under Para 2.31 SL No. II of Foreign Trade Policy 2023 and import of the same without a valid license rendered the imported goods prohibited. The importer has neither in the PH appearances nor in his written statement made any request for re-export of the impugned goods. As discussed in the foregoing para's, it is evident the Importer has deliberately misdeclared the imported goods with a malafide intention to bypass the policy condition. Therefore, I hold that the impugned imported goods are liable for absolute confiscation as per the provisions of Section 111(d), 111(f), 111(l) and 111(m), of Customs Act, 1962.

17.1 As the impugned goods are found to be liable for absolute confiscation under Section 111(d), 111(f), 111(l) and 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNS. The Section 125 ibid reads as under: -

"Section 125. Option to pay fine in lieu of confiscation.-(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[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."

17.2 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine where there is no restriction on policy provision for domestic clearance. I find that since the Importer is involved in

misdeclaration, restricted items without a valid license thus rendering the goods as prohibited and attempting transit of the goods in violation of the act and the foreign policy, there is no scope left for leniency in the instant case.

18. ROLE AND CULPABILITY OF M/s Jishan Impex

18.1 I find that the SCN has proposed penalty under section 112(a), 112(b) and section 114AA of the Customs Act, 1962 against M/s **Jishan Impex** Now I will discuss liability of them under the proposed sections of the customs act, 1962 for levying penalty against M/s **Jishan Impex**

18.2 I find that the importer M/s **Jishan Impex** and alloy wheels imported 'Old and Used Tyres' vide Bill of Entry No. 5607677 dated 21.04.2023 without valid license in violation of Foreign Trade Policy and mis-declared the value, quantity and description in the import document and thereby violating the provisions of Section 14 and Section 46 of the Customs Act, 1962. Hence, it appears that the 3312 Nos (Actually imported as 3527 Nos.) of imported 'Old & Used Tyres' (Estimated Assessable value **Rs. 81,51,649/-/-** as per C.E.'s report) under Bill of Entry No. 5607677 dated 21.04.2023 are liable for absolute confiscation under Section 111(d), 111(f), 111(l) & 111(m) of the Customs Act, 1962 read with 'Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992. Therefore, I find that by the acts of omission and commission, the importer, M/s **Jishan Impex** has rendered itself liable for penalty under Section 112(a) of the Customs Act, 1962. thus, the same is confirmed Under section 112(a) (i) of the Customs Act, 1962.

18.3 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s **Jishan Impex** under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

18.4 As regards the penalty on M/s **jishan Impex** under Section 114AA of the Customs Act, 1962 is concerned, Section 114AA mandates penal action for intentional usage of false and incorrect material against the offender. From the investigation it has come to the notice that the imports were made without a valid license in violation of the Foreign Trade Policy and misdeclaring the value, quantity and description in the import documents and thereby it's clearly evident that that M/s **Jishan Impex** wheels has violated the provisions of Section 14 and Section 46 of the Customs Act, 1962. M/s Jishan Impex via his proprietor have knowingly and intentionally made/ signed/ used and/or caused to be made/signed/used the import documents and other related documents which were false or incorrect in material particular such as description, value etc., with mala-fide intention, and therefore, the

Importer is liable to penalty under Section 114AA of the Customs Act, 1962.

19. ROLE AND CULPABILITY OF M/s O.K. Cargo Craft Pvt. Ltd., CB

19.1 I find that M/s **O.K. Cargo Craft Pvt. Ltd.** filed the Bill of Entry no. 5607677 dated 21.04.2023 the present shipments imported by M/s. **O.K. Cargo Craft Pvt. Ltd.** During the examination, it has come to the notice that the imports were made without valid license in violation of Foreign Trade Policy and mis-declared the value, quantity and description in the import document and thereby violating the provisions of Section 14 and Section 46 of the Customs Act, 1962. Para 2.31 Sl. No. II of Foreign Trade Policy 2023. Para 2.31 Sl. No. II of Foreign Trade Policy 2023 clearly prescribes for import of any second hand goods other than the capital goods restricted and is allowed on against an authorization. The Customs broker being the link between the importer and the Customs authority is supposed to be well versed with such policy condition and it is the duty of the Customs Broker to guide the importer about the same. However, M/s **O.K. Cargo Craft Pvt. Ltd** did not do justice to his job in this case and rendered the restricted goods imported without a valid authorization as “prohibited” and liable to be absolutely confiscated under section 111(d), 111(f), 111(l) & 111(m).

19.2 I find that the Customs broker failed to ensure compliance of the policy condition about restriction and mandatory requirement for the license issued by DGFT for importing the subject goods. I find that department treats documents filed by CHA with certain degree of trust which completely violated in instant case. Dealing with the shipments of a restricted item turned prohibited in absence of mandatory license issued by DGFT is a grave offence. Such acts of omission and commission have serious financial/security consequences.

19.3 I find that the omission and commission on the part of M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker) filed BE who were knowingly concerned in importing mis declared ‘Old and Used Tyres vide Bill of Entry No. 5607677 dated 21.04.2023 in terms of value and description and also without valid license in violation of Foreign Trade Policy have rendered themselves liable to penalty under **Section 112(b)(i)** of the Customs Act, 1962.

19.4 Further, I also find that M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker) via his proprietor has knowingly and intentionally made, signed or used and/or caused to be made/signed/used import documents and other related documents, which were false or incorrect, in material particulars, for the purposes of illegal import of subject goods, therefore, they are also be liable to penalty under **Section 114AA** of the Customs Act, 1962.

Order

20. In view of above, I pass the following order.

- i. I reject the declared value of Rs. 5,29,623/- (CIF) for the 3312 'Old & Used tyres' imported under the Bill of Entry No. 5607677 dated 21.04.2023 under Rule 12 of Customs Valuation Rules, 2007 and order to re-determine the same as Rs. 81,51,649/- (CIF) under Rule 9 of Customs Valuation Rules, 2007 for actually imported 3527 pcs of 'old & used tyres'.
- ii. I order for absolute confiscation of the 3527 Nos. of 'Old & Used tyres' valued Rs. 81,51,649/- (CIF) imported under the Bill of Entry No. 5607677 dated 21.04.2023 under Section 111(d), 111(f), 111(l) and 111(m) of the Customs Act, 1962 read with Section 3 (3) of foreign Trade (Development and Regulation) Act, 1992. Unless an appeal against such order is pending, the said impugned goods i.e. 3527 Nos. of 'Old & Used tyres' valued Rs. 81,51,649/- (CIF) would be liable for Disposal as per instructions and guidelines in CBIC disposal manual, 2019.
- iii. I impose a penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on the importer M/s. Jishan Impex, under Section 112(a)(i) of the Customs Act, 1962.
- iv. I refrain from imposing any penalty on the importer M/s. Jishan Impex under Section 112(b) of the Customs Act, 1962
- v. I impose a penalty **Rs. 1,00,000/- (Rupees One Lakh only)** on the importer M/s. M/s. Jishan Impex via its proprietor under Section 114AA of the Customs Act, 1962.
- vi. I impose a penalty **Rs. 15,000/- (Rupees Fifteen Thousand Only)** on the Custom Broker M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker), under Section 112(b)(i) of the Customs Act, 1962.
- vii. I impose a penalty **Rs. 10,000/- (Rupees TEN Thousand Only)** on the Custom Broker M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker), under Section 114AA of the Customs Act, 1962.

21. 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 Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

22. The Show Cause Notice bearing No. GEN/ADJ/ADC/2004/2023-Adjn dated 19.10.2023 stands disposed in above terms.

अमित कुमार मिश्रा
अपर आयुक्त, सीमा शुल्क
सीमा शुल्क भवन, मुन्द्रा

नोटिस प्राप्तकर्ताओं की सूची/List of Noticees

1. M/s Jishan Impex, Plot No. 2/1/86-2, Kanthawala Naka, Mundra - 370421, Gujarat (IEC No. AARFJ2231P) (Proprietor: Kakal Jushab Illiyash)
2. M/s O.K. Cargo Craft Pvt. Ltd. (Customs Broker), Second Floor, Mundhra CFS, APSEZ Mundra, Kutch - 370421

प्रति/Copy to,

1. The Additional Director General, DRI, Ahmedabad.
2. The Additional Director, Directorate of Revenue Intelligence, Regional Unit, Gandhidham (Kutch).
3. The Dy./Asstt. Commissioner (Legal/Prosecution), Custom House, Mundra.
4. The Dy./Asstt. Commissioner (RRA), Customs House, Mundra.
5. The Dy./Asstt. Commissioner (TRC), Customs House, Mundra.
6. The Dy./Asstt. Commissioner (EDI), Custom House, Mundra.
7. The Dy./Asstt. Commissioner (Disposal), Custom House, Mundra.
8. Notice Board (to display on Notice Board for all Noticees).
9. Guard File.