

 <p style="text-align: center;">कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH-370421</p> 	
A. File No.	: F. No. E/772486/EKTREE
B. Order-in- Original No.	: MCH/ADC/MK/ <u>27</u> /2023-24
C. Passed by	: Smt. Mukesh Kumari, Additional Commissioner of Customs, Custom House, Mundra.
D. Date of order /Date of issue	: 08.05.2023
E. Show Cause Notice No. & Date	: F. No. E/772486/EKTREE dtd. 18.04.2023
F. Noticee(s)/Party/Importer	: M/s Ektree Impex (IEC : AAJFE7569F)

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

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

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

“ सीमा शुल्क आयुक्त (अपील), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, 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 उपर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के 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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

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.

-
-

BRIEF FACTS OF THE CASE

M/s Ektree Impex (IEC AAJFE7569F), having registered address at Second floor, Unit No.205, Vardhman Bahnhof Plaza, Plot No.-6, Pocket-7, Sector-12, Dwarka, South West Delhi, Delhi, 110078 (hereinafter referred to as “importer”) imported consignments of goods declared as “PS Wall Panel” (hereinafter referred to as “impugned goods”) vide Bill of Entry No. 5222643 dtd 25.03.2023 through Custom Broker M/s Care Container Lines Pvt Ltd..

2 . Whereas the impugned goods declared as ‘PS Wall Panel’ weighing 19,865 kgs having declared assessable value of Rs. 37,40,587 /- (Rupees Thirty Seven Lakh Forty Thousand Five Hundred and Eighty Seven only) and applicable custom duty of Rs. 11,58,834 /- (Rupees Eleven Lakh Fifty Eight Thousand Eight Hundred and Thirty Four Only).

3 . Whereas the Bill of entry was self-assessed by the importer under section 17 (1) of the Customs Act, 1962 and classified the goods under HSN Code 39211100 having basic custom duty @10%, SWS @10% and IGST @18%.

4 . Whereas the aforesaid Bill of entry was facilitated by RMS however the container carrying the goods i.e. FYCU1095240 was selected for scanning by RMS and hence forwarded to Container Scanning Division and scanning report was found mismatch. Consequently, the goods covered under the said bill of entry were forwarded to Docks Examination for examination purpose.

5. Whereas the goods were examined by the docks officer and examination report was given as follows:

“rms facilitated be. container selected for scanning, reported mismatch.

vfd 1 container no. and seal no., found correct. vfd seal intact. opened and examined the cargo as per examination order/instructions on random check basis under supervision of

the supdt. (docks) in presence of customs broker's representative.

vfd description of the goods with invoice, packing list, bl and other import documents.

on examination of the goods, it appears that the subject goods are wall panel made up of plastic (ps) and are classified under cth 39211100 which is for ?other plates, sheets, film, foil and strips, of plastic?.

as per note 11(b) of chapter 39 of customs tariff act, ? structural elements used, for example, in floors, walls or partitions, ceiling or roofs are classifiable under cth 3925. note 10 of the customs tariff act, 1962 may also be referred. chapter heading 3925 covers the goods ?builders? ware of plastic not elsewhere pecified or included?.

as per the use of the goods, it appears that the subject goods are rightly classifiable under cth 3925 which attracts bcd @ 15% as compared to cth 3921 which attracts bcd@ 10%. we may forward the be to group for proper classification of the goods as per above observation. ”

6. Whereas the importer vide his letter states that aforesaid goods fall under HS Code 3921 and same were rightly classifiable by them and the same are not classifiable under 3925.

7. Whereas as per the provisions of Section 12 of Customs Act, 1962 the duties of custom is/are leviable on the goods imported into India. The relevant para is produced below:

Section 12. Dutiable goods. –

(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India.

8. Whereas the classification of the imports and exports of the goods are governed by the Customs Tariff Act, 1975. It is also called as the “Tariff Schedule” or the “Indian Customs Tariff”. Under the Customs Tariff Act, 1975 the customs duty is levied on the value of imported goods at the time of importation. The rate of duty varies depending on the nature of the goods, their country of origin, and the terms of trade agreements between India and other countries.

9. Whereas, the goods when imported into India are self-assessed by the importer under section 17 (1) of the Custom Act, 1962 and the impugned goods declared as ‘PS Wall Panel’ were classified by the importer under HS code 3921 1100 having Basic Custom Duty @10%

10. Whereas, the impugned goods declared as ‘PS Wall Panel’ appears to be

appropriately classified under HS code 3925 9090 having Basic Custom Duty @15%.

11. Whereas the classification of the goods is made on the basis of the general rules of interpretation. These rules are applied in a systematic and standardized manner to ensure that products are classified correctly.

12. Whereas the goods namely plastics and articles thereof are covered under chapter 39 of the Custom Tariff Act, 1975.

13. Whereas as per the provisions of note 11 of the chapter 39 of the Custom Tariff Act, 1975 the imported goods appears to be correctly classifiable under 3925.

14. Whereas, as per the available record it is found that the goods are embossed with words "**EKTREE LOUVERS**". As per terms in general parlance, the word louvers are a type of ventilation component that allows air to flow through a building while keeping out unwanted elements like rain and debris. Louvers consist of slats or blades arranged at an angle to each other, allowing for airflow while preventing direct sunlight from entering a building. They are typically made of metal, plastic or wood and can be installed on the exterior or interior of a building. Accordingly, the imported goods appears to be rightly classifiable under 3925 9090.

15. Whereas the applicable BCD on 3925 attracts basic custom duty @ 15% of assessable value and it appears that the importer has mis-classified the goods with intention to evade the custom duty.

16. Whereas the sub-section 4 and 4(A) of section 46 of the Customs Act, 1962 provides that importer while filing the bill of entry the importer shall declare the true contents of the goods.

17. Whereas Section 111 of the Customs Act, 1962 provides for confiscation of goods imported improperly. According to this section, any goods which are imported or exported in contravention of any provisions of the Customs Act or any other law for the time being in force, shall be liable to confiscation.

18. As per the provision of the section 112 (a) (i) Customs Act, 1962 penalty is imposable on the goods imported improperly into India.

19. Therefore the importer *M/s EKTREE (IEC AAJFE7569F)* was called upon to Show Cause to the **Additional Commissioner of Customs**, having her office at Customs House, Mundra, 5B Port User Building, Mundra-370421, within 30 days of the receipt of this Notice as to why:-

(i) the classification of the aforesaid imported goods under HS code 3921 1100 should not be rejected and should not be re-classified under HS code 3925 9090 of the Custom Tariff Act, 1975.

(ii) the goods covered under Bill of Entry No. 5222643 dtd 25.03.2023 having assessable value of Rs. 37,40,587 /- (Rupees Thirty Seven Lakh Forty Thousand Five Hundred and Eighty Seven only) should not be confiscated

under section 111 (m) of the Customs Act, 1962.

(iii) the Penalty should not be imposed on importer under Section 112 a (ii) of the Customs Act, 1962.

Defence Submission and Personal Hearing

20. M/s Ektree Impex vide its letter dtd. 21.04.2023 have submitted that they were not aware of Chapter Notes 11(b) which clearly says structural elements used, for example, in floors, walls or partitions, ceilings or roofs will be classified in HS Code 3925 9090. The importer further states that they agree to change the classification of HSN Code 39211100 to 39259090.

21. The importer further states that they don't want any personal hearing and also requested not to impose penalty under section 112 (a)(i) of the Customs Act, 1962 as they were not aware of the chapter notes and classification done by them was by mistake.

Discussion and findings

22. I have carefully gone through the Show Cause Notice as well as the submission made by the importer through his letter. I find that the 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 available records and evidences.

23. I find that following main issues are involved in the SCN, which are required to be decided-

- a. Whether the impugned goods declared as 'wall panel' is correctly classifiable under 3925 9099 or not ?
- b. Whether the impugned goods are liable for confiscation under section 111(m) of the Customs Act, 1962 or not ?
- c. Whether the importer is liable for penal action under Section 112 a (ii) of the Customs Act, 1962 or not ?

24. I find that the bill of entry for the impugned goods i.e. 'PS Wall Panel' was self-assessed by the importer under Section 17(1) of the Customs Act, 1962. The relevant part of the same is produced below:

17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

I also refer to section 2 (2) of the Customs Act, 1962 which specifies the definition for the word assessment. The definition of the word 'assessment' is produced below:

"assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any. Under this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to -

(a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;

25. I find that as per the provisions of the Customs Act, 1962 the importer has made the *assessment* of the impugned goods and classified the goods under HS Code 3921 1100 having basic custom duty @10%.

26. I find that the aforementioned Bill of Entry was Risk Management System (RMS) facilitated however the same was selected for scanning and scanning report of the same found to be mismatch and hence the container was forwarded to docks for examination purpose.

27. I find that the goods were examined by the docks officer in presence of the authorized representative i.e. the custom broker M/s Care Container Lines Pvt. Ltd. and as per the examination report the goods were found to be mis-declared in terms of classification and the bill of entry was forwarded to assessment group for further action.

28. I find that as per the provisions of sub-section 4 of Section 46 of the Customs Act, 1962 the importer is duty bound to give correct declaration in the bill of entry. Further reference is also invited towards sub-section 4(A) of Section 46 of the Customs Act, 1962 which states as follows:

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

Upon perusal of aforesaid section I find that the word ‘ensure’ has deep implications and places greater responsibility on the shoulders of the importer to take necessary steps or measures so that the goods are correctly classified and safeguard the revenue admissible to the Government of India.

29. I find that the classification of the goods is made on the basis of the general rules of interpretation. I find that the note 10 of chapter 39 specifies the goods that are to be covered under HSN Code 3920 and 3921. The relevant part of the same is produced below:

10. In headings 3920 and 3921, the expression “plates, sheets, film foil and strip” applies only to plates, sheets, film, foil and strip (other than those of Chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The relevant part of heading 3921 is reproduced below for ready reference:

3921 OTHER PLATES, SHEETS, FILM, FOIL AND STRIP, OF PLASTICS

– Cellular :

39211100 -- of polymers of styrene

On perusal of above chapter notes I find that for the goods to be falling under 3921 there are few conditions that are to be fulfilled namely:

- the goods should be in form of plates, sheets, film, foil and strip, and
- the goods should be blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares), and
- the goods should not be further worked so that they become articles ready for use even if they are simply cut.

30. I also find that goods were embossed with the words ‘Ektree Louvers’. Louvers are a type of ventilation system that consists of a series of horizontal slats or

blades angled to allow air to flow through while keeping out rain, snow, and direct sunlight. They are commonly found in windows, doors, and exterior walls of buildings, as well as in mechanical and HVAC systems. Louvers can be fixed or adjustable, with the latter allowing the user to control the amount and direction of airflow. They are typically made from materials such as wood, aluminum, or PVC, and come in a variety of shapes, sizes, and colors. In addition to their functional role in providing ventilation and shading, louvers also enhance the aesthetic appeal of a building, creating interesting patterns and textures on its exterior.

31. I refer to note 11 of the chapter 39 of the Custom Tariff Act, 1975 which is reproduced as below:

11. Heading 3925 applies only to the following articles, not being products covered by any of the earlier headings of sub-Chapter II:

(a) reservoirs, tanks (including septic tanks), vats and similar containers, of a capacity exceeding 300 l;

(b) structural elements used, for example, in floors, walls or partitions, ceilings or roofs;

(c) gutters and fittings thereof;

(d) doors, windows and their frames and thresholds for doors;

(e) balconies, balustrades, fencing, gates and similar barriers

;

(f) shutters, blinds (including Venetian blinds) and similar articles and parts and fittings thereof;

(g) large scale shelving for assembly and permanent installation, for example, in shops, workshops, warehouses;

(h) ornamental architectural features, for example, flutings, cupolas, dovecotes; and

(ij) fittings and mountings intended for permanent installation in or on doors, windows, staircases, walls or other parts of buildings, for example, knobs, handles, hooks, brackets, towel rails, switch-plates and other protective plates.

I have browsed the website i.e. <https://ektree.in/office.php> of the importer wherein the impugned goods have been displayed under product category 'ektree louvers' and graphics available on the website of the same clearly depicts that goods are to be fitted/mounted on walls.

32. Hence, on the basis of the examination report given by the docks officer read with the relevant notes of the chapter 39 of the Custom Tariff Act, 1975 and other evidences put forth me **I hereby hold that the impugned goods merits classification under HSN Code 3925 9090 of the Customs Tariff Act, 1962.**

33. Now, I move towards the next question that whether the impugned goods are liable for confiscation under section 111(m) of the Customs Act, 1962. I draw reference towards the Section 111 (m) of the Customs Act, 1962 the relevant part of the same is produced below:

“ Section 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54. ”

34. I find that for invoking Section 111(m) of the Customs Act, 1962 the declaration made in the Bill of Entry filed under Section 46 of the Customs Act, ***must fail to correspond***, in value or any other particular, to the goods actually imported by the importer. It deals with intentional mis-declaration and mis-match between what has been declared in the Bill of Entry and what has actually been imported by the importer. In the present case, I find that HSN Code used by the importer in the Bill of Entry does not corresponds to the goods actually imported and the same are correctly classifiable under HSN Code 3925 9090 having basic custom duty @ 15 %. I find that the revenue implication for such mis-classification amounts to duty difference of Rs. 2, 42, 764 /- (Rupees Two Lakh Forty Two Thousand Seven Hundred and Sixty Four only).

35. I find that from the afore-said discussion it has been established that the goods are mis-declared under wrong HSN Code and in view of the same ***I hold that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.***

36. Now, I move towards final question that whether penalty should be imposed on the importer under section 112 (a) (ii) Customs Act, 1962. The relevant part is produced below:

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,*

(i)

(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*

37. I find that section 112(a) will be attracted once the ingredients of section 111 of the Customs Act, 1962 are ascertained. As discussed above such ingredient which is of mis-declaration in terms of HSN Code has already been established and hence there is no impediment in invoking section 112(a)(ii) of the Customs Act, 1962. I find that applicable custom duty under re-determined HSN Code 3925 9090 is @15% and hence, I find that this act of the importer was done so as to evade the differential custom duty of **Rs. 2, 42, 764/- (Rupees Two Lakh Forty Two Thousand Seven Hundred and Sixty Four).**

38. I also find that the importer vide its letter dated. 13.04.2023 have submitted that they were doing regular shipment under the HSN Code 3921 from Dadri port clearly shows that the importer by his act of omission or commission has resulted in the loss of revenue to the Government Exchequer in past also.

39. In view of the above, I am satisfied that for the subject consignment the importer is liable for penalty and hence ***I hold that the penalty is leviable on importer under Section 112 a (ii) of the Customs Act, 1962.***

40. In view of the foregoing discussions and finding, I pass the following order:

ORDER

- A. I reject the declared classification i.e. 3921 1100 of the impugned goods 'PS Wall Panel' imported vide Bill of Entry No. 5222643 dated 25.03.2023 and I order to re-classify the same under HSN Code 3925 9090 under Custom Tariff Act, 1975.
- B. I confiscate the afore-said goods imported vide Bill of Entry No. 5222643 dated 25.03.2023 having assessable value of Rs. 37,40,587 /- (Rupees Thirty Seven Lakh Forty Thousand Five Hundred and Eighty Seven only) under section 111 (m) of the Customs Act, 1962. However, I give an option to redeem the

impugned goods on payment of Redemption Fine of Rs. 2,00,000/- (Rupees Two Lakh only) under Section 125 of the Customs Act, 1962.

- C. I also impose the penalty of Rs. 24,000/- (Rupees Twenty Four Thousand only) on the importer under Section 112 a (ii) of the Customs Act, 1962.

41. This order is issued without prejudice to any other action which may be required to taken against any person as per the provisions of the Customs Act, 1962 or any other law for the time being in force.

Additional Commissioner of Customs
Custom House, Mundra

To,
M/s Ektree Impex (IEC AAJFE7569F)
Second floor, Unit No.205, Vardhman Bahnhof Plaza,
Plot No.-6, Pocket-7, Sector-12, Delhi, 110078

Copy to:

1. The Deputy Commissioner of Customs, Assessment Group(IIG), Custom House, Mundra
2. The Deputy Commissioner of Customs, TRC, Custom House, Mundra
3. The Deputy Commissioner of Customs, RRA Section, Custom House, Mundra
4. The Deputy Commissioner of Customs, EDI Section, Custom House, Mundra
5. Guard file