



**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/154/2024 GRP-5 6
B	Order-in-Original No.	MCH/ADC/AK/15/2024-25
C	Passed by	ARUN KUMAR Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	16.04.2024
E	Noticee/Party/ Importer/ Exporter	M/s Narayan enterprises, Plot No. 17, First floor, F.I.E Patparganj Industrial Area, East Delhi, Delhi, 110092
F	DIN No.	20240471MO000000EA9C

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 नियमाबली 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),

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

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

**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 पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के 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 जापन के साथ छूटि/व्याज/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:

An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ warehouse Bill of Entry No. 1003541 dated 16.02.2024 filed by M/s Fast Track CFS Private Limited, Plot No. 3, Block-C, Sector-II, APSEZ Ltd., Mundra-370421, Gujarat, for and on behalf of its client M/s Narayan Enterprises, Plot No. 17, First floor, F.I.E, Patparganj Industrial Area, East Delhi, Delhi, 110092 holding IEC No: BIMPC2872B (hereinafter referred to as 'the importer'), through their Customs Broker, M/s Anon Global Logistic (hereinafter referred to as 'the CB') at Mundra SEZ port for import of various items viz. Spray Gun, Vacuum Cleaner, Air Impact Wrench, High Pressure Pump, Spare Parts of Air Impact Wrench under different CTH has possible mis-declaration and concealment of prohibited/restricted items. Hence, the Container No. FFAU2564907 was put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

2. Based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section, CH Mundra in presence of representative of the CBs. On being asked, the representative of CB provided copies of import documents Viz. SEZ warehouse BE No. 1003541 dated 16.02.2024, Bill of Lading No. YSQ2401198 dated 28.01.2024, Invoice No. 2023/0958 dated 15.01.2024 and concerned Packing List. As per these documents, the Shipper is M/s Zhejiang Zhengmao Pneumatic Machinery Co. Ltd, China, the consignee is the importer M/S Narayan Enterprises, Delhi and the notify party is M/s Fast Track CFS Private Limited, APSEZ Mundra. The details of the declared cargo are as under:

TABLE-A

SEZ warehouse BE No. 1003541		Dated 16.02.2024				Importer			M/S Narayan Enterprises	
Declared										
S. No.	Description	HSN	CTN	Quantity (pieces)	Ass. Value	BCD rate	BCD	SWS	IGST	Total Duty
1	Air Impact Wrench	82041120	1220	1475	9,40,519	10%	94,052	9,405	1,87,916	2,91,373
2	High Pressure Pump	84135029	10	10	8,390	7.5%	629	63	2,543	3,235
3	Spare parts for Air impact wrench	82060090	2	5721			16,800	1,680	33,566	52,046
4	Vacuum Cleaner	85081900	87	87	87,592		8,759	876	17,501	27,136
5	Spray Gun	84242000	4	200	67,120	7.5%	5,034	503	13,078	18,616
Total		1323	7493	1271618		125274	12,527	254604	392406	

3. During the course of examination, total 1321 cartons were found i.e.2 less than the declared quantity of cartons. On further examination and counting of the number of pieces of the goods contained in those cartons, there was mis-declaration in respect of quantity of goods mentioned at Sr. no. 1 above viz. 'Air Impact Wrench' and total 2472 pieces are found i.e. 997 pieces more than the declared 1475 pieces. The details of the goods found during the course of examination is as under:

TABLE-B

S. No.	Description	No. of carton		No. of item (Pieces)	
		Declared	Actual	Declared	Actual
1	Air impact Wrench	1220	1218	1475	2472
2	High Pressure Pump	10	10	10	10
3	Spare parts for air impact wrench	2	2	5721	5721
4	Vacuum Cleaner	87	87	87	87
5	Spray Gun	4	4	200	200
TOTAL		1323	1321	7493	8490

4. Accordingly, it was found that, there is a mis-declaration in respect of quantity of item No, 01 i.e. 'Air impact wrench' and total 2472 pieces are found i.e. 997 pieces more than the declared 1475 pieces. Further, the assessable value declared by the importer appeared low and hence further opinion of Chartered Engineer was taken for the purpose of true and correct valuation of the consignment, the Chartered Engineer Shri Ajayrajsinh B. Jhala submitted his report No. ABJ: INSP: CE: SIIB:MAC:23-24 dated 11/12.03.2024. Valuation of the consignment given by the Chartered Engineer is as tabulated below:

TABLE-C

Sr. No.	Item	No. of pieces	Total average C.I.F. value assessed b CE in INR
1	Air impact Wrench	2472	31,92,900/-
2	High Pressure Pump	10	14 000/-
3	Spare parts for air impact wrench	5721	3,14,655/-
4	Vacuum Cleaner	87	1 04 400/-
5	Spray Gun	200	80 000/-
	Total	8490	37,05,955/-

5. Rejection of declared value & Re determination of Assessable Value:

Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007") provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) ibid states that "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 of CVR, 2007". It appeared that transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. In the present case, it appeared that there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

5.1 It appeared that, the value of the impugned goods could not be determined under Rule 4 and 5 ibid since the value of contemporaneous imports of identical and similar goods of same quality and composition was not found. Proceeding sequentially, it is stipulated under Rule 6 ibid that where the value is not determinable under Rule 3, 4 and 5, the value is to be determined under Rule 7 or when the value cannot be determined under that Rule, under Rule 8. Whereas, Rule 7 provides for 'Deductive Value' i.e. the value is to be determined on the basis of valuation of identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. For the reasons detailed above, the values also cannot be determined as per the said Rule 7 ibid. Likewise, for application of Rule 8 of the CVR, 2007, the cost of production or processing involved in the imported goods were not available. In the absence of requisite data, the value could not be determined by taking recourse to these rules either.

5.2 The provisions of Rule 4 to 8 ibid, are not applicable in the instant case, the value of the impugned goods is required to be determined under the provisions of Rule 9 of the CVR 2007, which reads as under: -

"Rule 9: Residual method — (1) Subject to the provisions of Rule 3, where the value of the 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:"

6. The assessable value of the impugned goods is required to be re-determined under Rule 9 ibid, i.e. as per the residual method. Hence, accordingly the assessable CIF value of the consignment value has been taken on the basis of report submitted by the Chartered Engineer for the purpose of valuation under provisions of Rule 9 of the CVR, 2007 read with note 2 of the interpretative notes for Rule 9 of the CVR, 2007. Accordingly, it appeared that the total value of the goods having declared assessable value of Rs.12,71,618/- is liable to be rejected and assessable value of the impugned goods is liable to be re-determined as Rs.37,05,955/- as per valuation report submitted by the CE.

7. In view of the above facts and discussions, total duty of the consignment comes to Rs.11,46,570/- instead of self-assessed duty of Rs.3,92,405/- declared by the importer in the BE. The differential duty comes to Rs.7,54,165/- as calculated under: TABLE-D

Sr. No.	Description	Value as per CE report	BCD	sws @10% of BCD	IGST	Total Duty calculated during the investigation	Duty calculated by the importer in BE	Differential (Rs)
1	Air Impact Wrench / 82041120	31,92,900	3,19,290 (@10%)	31,929	6,37,942 (@18%)	9,89,161	2,91,372	6,97,789
2	High Pressure Pump 84135029	14,000	1,050 (@7.5%)	105	4,243 (@28%)	5,398	3,235	2,163
3	Spare parts for air impact wrench 82060090	3,14,655	31,466 (@10%)	3,147	62,868 (@18%)	97,480	52,046	45,434
4	Vacuum Cleaner 85081900	1,04,400	10,440 (@10%)	1,044	20,859 (@18%)	32,343	27,136	5,207
5	Spray Gun 84242000	80,000/-	6,000 (@7.5%)	600-	15,588 (@18%)	22,188	18,616	3,572
TOTAL		37,05,955/-	3,68,246/-	36,825/-	7,41,500/-	11,46,570/-	3,92,405/-	7,54,165/-

8. The importer vide letter dated 12.03.2024 informed that during the SIIB examination excess quantity was found. They further submitted that value enhancement and CE report is accepted by them; they are ready to pay applicable Customs duty, as per Customs Law. They further requested to give waiver of SCN and PH and to decide the matter on merit. They also submitted that they will not file appeal and will not claim any refund in this matter.

9. RELEVANT LEGAL PROVISIONS:

A. RELEVANT PROVISIONS OF SEZ ACT, 2005;

2. Definitions. — In this Act, unless the context otherwise requires, —
(o) "import" means—

- bringing goods or receiving services, In a Special Economic Zone, by a Unit or Developer from a place outside India by land/ sea or air or by any other mode, whether physical or otherwise; or*
- receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

Section 21: Single enforcement officer or agency for notified offenses.

- The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
- The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*

iii. Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

Section 22: Investigation, inspection, search or seizure. —

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, In respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the Investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned, Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government, by the Notification 2665(E) dated 0508.2016 has notified offences contained in Sections 28, 28M, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

47 (5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

(B) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): "goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;

Section 2(23): "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(25): "imported goods", means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

Section 2(26): "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;

Section 2(39): "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Section 11A: "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

Section 46. Entry of goods on importation:

(4) 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, relating to the imported goods,

(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,

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

1. 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 transhipment, with the declaration for transhipment 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,

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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:

(C) Relevant Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

"Rule 9: Residual method - (1) Subject to the provisions of Rule 3, where the value of the 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: "

Rule 12, Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub rule (1) of rule 3.

10. In view of the above facts, it appeared that: -

- (i) The assessable value of Rs.12,71,618/- of the imported goods declared by the importer in the SEZ warehouse Bill of Entry No. 1003541 dated 16.02.2024 is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- (ii) The assessable value of the consignment (including non-declared items) is liable to be re-determined as **Rs.37,05,955/-** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 on the basis of report submitted by the empanelled chartered engineer.
- (iii) Total applicable customs duty on this re-assessed value of Rs.37,05,955/comes to Rs.11,46,570/- (Rupees Eleven Lakh Forty-Six Thousand Five Hundred and Seventy only) instead of Rs.3,92,405/- as declared in the BE which resulted into short levy of customs duty amounting to **Rs.7,54,165/-** is recoverable.

- (iv) The said Bill of Entry is liable to be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- (v) The present consignment imported in contravention of Sec 46 of the Customs Act, 1962 are liable for confiscation under Section 111 (l) and 111 (m) of the Customs Act, 1962.
- (vi) The importer M/S Narayan Enterprises, Plot No. 17, First floor, F.I.E, Patparganj Industrial Area, East Delhi, Delhi, 110092 holding IEC No: BIMPC2872B is liable for Penalty under Section 112(a)(ii) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

11. The Importer, vide their letter dated 15.04.2023 submitted that they do not want any show cause notices and personal hearing in this matter. They further submitted that, enhancement of value is accepted by them; they are ready to pay applicable Customs duty, as per Customs Law. They further requested to decide the matter on merit. They also submitted that, they will not file appeal and will not claim any refund in this matter.

DISCUSSION & FINDING

12. I have carefully gone through the Investigation report dated 21.03.2024 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that M/s Fast Track CFS Private Limited, SEZ had filed SEZ warehouse Bill of Entry No. 1003541 dated 16.02.2024 for and on behalf of its client M/s Narayan Enterprises, Delhi, holding IEC No: BIMPC2872B through their Customs Broker, M/S Anon Global Logistics at Mundra SEZ port for import of various items viz. Spray Gun, Vacuum Cleaner, Air Impact Wrench, High Pressure Pump, Spare Parts of Air Impact Wrench under different CTH has possible mis-declaration and concealment of prohibited/restricted items. Hence, the Container No. FFAU2564907 was put on hold for detailed examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

13. On the basis of the examination report and investigation carried out, I find that the quantity of item No. 01 i.e. Air impact wrench is found 2472 pieces which are 997 pieces more than the declared 1475 pieces in terms of declaration in Bill of Entry and other import documents. Simultaneously, I also find that there was mis-declaration in respect of valuation of the entire consignment. Hence, the examination of the consignment was made to be carried out by an empaneled Chartered Engineer Shri Ajayrajsinh B. Jhala. He has submitted report No. ABJ: INSP: CE: SIIB:MAC:23-24 dated 11/12.03.2024 and reported

the assessable CIF value of the consignment as **Rs. 37,05,955/-**. Accordingly, the consignment is found mis / non-declared in respect of quantity as well as value which resulted into non-levy/ short-levy of duty amounting to **Rs.7,54,165/** is recoverable.

14. Further, I find that the importer had mis-declared the quantity of the goods at the time of filing of Warehouse Bill of Entry. On perusal of the valuation report of the Govt. Chartered Engineer, it clearly comes out that M/s. Narayan Enterprises has indulged in the evasion of Customs Duty by way of mis-declaration of imported goods and they had declared the value of the goods to be Rs. 12,71,617/- whereas the actual value of these goods arrived at by the Chartered Engineer is **Rs. 37,05,955 /-**.

15. In view of the above, the value declared by the importer in the corresponding Bill of Entry and invoice did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs (determination of Value of Imported Goods) Rules, 2007 and thus the same is liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of CVR, 2007 and also required to be re-assessed as per Section 17(5) of the Customs Act, 1962.

16. I find that the value of the goods Rs. 12,71,617/- as per SEZ warehouse Bill of Entry No. 1003541 dated 16.02.2024 cannot be considered as assessable value of the goods and hence the same is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been proved mis-declaration of goods in terms of quantity. In absence of credible data of import of identical, similar goods and other constraints in applying deductive method or cost of production methodology the value of these goods cannot be determined in terms of Rule 4,5,7,8 of Customs Valuation Rules 2007. Hence, the value is required to be determined in terms of Rule 9 of said rules. Therefore, the Assessable value based on market survey as provided by the Chartered Engineer is to be considered as the value of these goods.

17. I find that the consignment has been mis/non-declared in respect of quantity as well as value which resulted into non-levy/ short-levy of duty amounting to **Rs.7,54,165/** which is recoverable from the importer. Consequently, the consignment is liable for confiscation under Section 111(1) and 111(m) of the Customs Act, 1962. Furthermore, for the said act of omission and commission, the importer is also liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

18. I find that by above the acts of omission and commission, the importer has contravened the provisions of section 46 and Section 17 of the Customs Act, 1962 in as much as they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their liability correctly. The relevant portion of said provisions as under:

Section 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.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods,

Section 46, Entry of goods on Importation. —

(1) The Importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

19. I find that the impugned imported goods are not prohibited goods, an option of redeeming the goods is required to be granted to M/s. Narayan Enterprises, against the order of confiscation by paying redemption fine as provided under Section 125 of the Customs Act, 1962. 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 [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."

I find that as provided under Section 125 of the Customs Act, 1962, M/s. Narayan Enterprises, will have to pay amount of differential duty along with the redemption fine while exercising option to redeem the confiscated goods for home consumption. Thus, in view of these provisions, I hold that the goods can be redeemed by M/s Narayan Enterprises on payment of redemption fine if they choose to do so.

20. In view of foregoing discussion and findings, I pass the following order:

ORDER

- (i) I reject the declared assessable value of **Rs.12,71,618/-** of the imported goods in the SEZ warehouse Bill of Entry No. 1003541 dated 16.02.2024 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determined the same under Section 14 of the Customs Act, 1962 read with Rule 9 Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs. 37,05,955/-** on the basis of report submitted by the empanelled chartered engineer;
- (ii) I order to Re-assess the Bill of Entry No. 1003541 dated 16.02.2024 under Section 17(4) of the Customs Act, 1962 on the re-determined value of Rs.37,05,955/- and order to recover the duty of **Rs.7,54,165/-** accordingly;
- (iii) I confiscate the goods totally valued at Rs. 37,05,955/- covered under SEZ warehouse Bill of Entry No. 1003541 dated 16.02.2024 under section 111(l) and 111(m) of the Customs Act, 1962, however I give an option to the importer to redeem the confiscated goods on payment of **Rs. 3,75,000/- (Rupees Three Lakh Seventy-Five Thousand Only)** in lieu of confiscation under section 125 of the Customs Act 1962;
- (iv) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** upon the importer, M/s Narayan Enterprises, Plot No. 17, First floor, F.I.E, Patparganj Industrial Area, East Delhi, Delhi, 110092 under Section 112(a)(ii) 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.



(ARUN KUMAR)

**ADDITIONAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA**

F. No. CUS/APR/INV/154/2024-Gr 5-6-O/o Pr Commr-Cus-Mundr Dt.16.04.2024

To,

**M/s Narayan Enterprises,
Plot No. 17, First Floor, F.I.E,
Patparganj Industrial Area, East Delhi,
Delhi, 110092**

Copy to: - For information and necessary action, if any.

- (1) The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- (2) The Deputy/Assistant Commissioner (TRC), Custom House, Mundra
- (3) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- (4) Guard File.