

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात - 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425</p>	 आज़ादी का अमृत महोत्सव
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A	File No.	CUS/APR/BE/SAO/47/2024-Gr 2-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AKM/144/2024-25
C	Passed by	AMIT KUMAR MISHRA Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	27.09.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Aadi Overseas (IEC No. 0507036689) Prop No. 43, Pocket B Sector-4, Bawana Industrial Area, New Delhi-110039
F	DIN No.	20240971MO0000016668

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

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

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

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

“ सीमा शुल्क आयुक्त (अपील),

चौथी मंजिल, हुड्को बिल्डिंग, ईश्वर भुवन 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. 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 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 सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना 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:

1. M/s. Aadi Overseas (IEC No. 0507036689) situated at Prop No. 43, Pocket B Sector-4, Bawana Industrial Area, New Delhi-110039 (hereinafter referred as 'Importer' for the sake of brevity) has filed Bill of Entry No. 5037916 dated 13.08.2024 for import of "CPVC Compound CTH-39049010" availing COO benefit. The importer has claimed benefit of FTA based duty exemption under notification 046/2011 dated 01.06.2011 under MICECA on the basis of Certificate of Origin issued by issuing authority Malaysia. The details are as below:

Sr. No.	BE No. & Date	Item	Assessable Value (Rs.)	Duty Paid (Rs.)	COO No. & Date
1	5037916 dated 13.08.2024	CPVC Compound (CTH – 39049010)	Rs. 5483200/-	Rs. 986976/-	KL-2024- MICECA-26- 002451 dated 09.08.2024

2. Whereas, during the verification of Country-of-Origin Certificate, the Assistant Commissioner (TSK Section), CH Mundra vide letter F. No.CUS/ AG/MISC/1253/2023-AG dated 29.08.2024 has informed that that specimen signature of the issuing authority in CoO, appears to be manually signed and not matching with records available to this section whereas on routine process, all CoOs received in TSK section issued by Malaysia seems to be digitally signed and it appears that the subject CoO not to be duly signed by the Supplier/Export of Malaysia at Column 11 of said CoO. He has further stated that the same CoO reference No. KL-2024-MICECA-26-002451 has been issued for KATTUPALLI Port (Chennai) on 19.03.2024 to M/s. Omya India Pvt. Ltd., Kattupali Road, (IEC:0305016466). The said CoO has been sent to TSK, Chennai Customs with request to verify whether the CoO reference no. KL-2024-MICECA-26-002451 has been utilized or otherwise. In reply via mail dated 27.08.2024, TSK, Chennai Custom stated that on verification of the Bills of entry in ICES, it was found that a BE 2768445 dated 27.03.2024 has been filed claiming the below mention CoO KL-2024-MICECA-26-002451 issued on 19th March 2024 at Kattupalli. CoO has been defaced and BE OOC was given on 01.04.2024.

3. Thereafter, the importer M/s. Aadi Overseas vide their letter dtd. 02.09.2024 has informed that they filed the subject Bill of Entry with the CoO benefit from Malaysia. But now they have come to know from the custom officials that the CoO is fake and cannot be verified. They

have also informed that they are totally unaware of this fake CoO. They are ready to take the delivery of goods without CoO benefit and ready to pay the custom duty to save detention & demurrage charges. They don't want any PH or Show Cause Notice in this matter.

4. Further, the importer has also requested for permission to warehouse the goods under section 49 of Customs Act, 1962 which is accepted and allowed by the competent authority to warehouse the goods for 30 days.

5. Whereas, while surfing the aforesaid Bill of Entry from the ICES, it is noticed that the importer M/s. Aadi Overseas has filed BE 5037916 dated 13.08.2024 with benefit of BCD exemption under notification no. 046/2011-Customs dated 01.06.2011 on the basis of COO ref. No. KL-2024-MICECA-26-002451 dated 09.08.2024 under MICECA. Furthermore, from the COO certificate uploaded in e-Sanchit, it is noticed that they have uploaded CoO of MALAYSIA-INDIA COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT (MICECA) issued by Ministry of Investment, Trade and Industry, Malaysia (falls under Noti. Notification No. 53/2011-Customs dated July 1, 2011, of the Customs Act, 1962).

6. In view of the above, the Assistant Commissioner, TSK section, CH Mundra vide his letter dtd. 29.08.2024 has stated that the Country-of-Origin Certificate reference No. KL-2024-MICECA-26-002451 dated 09.08.2024 used by the importer, M/s. Aadi Overseas for import of consignment of BE 5037916 dated 13.08.2024 for import of "CPVC Compound CTH-39049010 from Mundra Port is not matching with records available to this section" ".

LEGAL PROVISIONAS:

7. Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 provides the method and manner of implementation of The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020). The relevant portion of the CAROTAR Rules applicable in the present matter is as under:

Rule 3 . Preferential tariff claim -

1. *To claim preferential rate of duty under a trade agreement, the importer or his agent shall, at the time of filing bill of entry,-*
 - i. *certificate of origin reference number;*
 - ii. *date of issuance of certificate of origin;*
 - iii. *originating criteria;*
 - iv. *indicate if accumulation/cumulation is applied;*

- v. indicate if the certificate of origin is issued by a third country (back-to-back); and
- vi. indicate if goods have been transported directly from country of origin
 - a. make declaration in the bill of entry that the goods qualify as originating goods for preferential rate of duty under that agreement;
 - b. indicate in the bill of entry the respective tariff notification against each item on which preferential rate of duty is claimed;
 - c. produce certificate of origin covering each item on which preferential rate of duty is claimed; and
 - d. enter details of certificate of origin in the bill of entry, namely:

Rule 6 (7): The proper officer may deny claim of preferential rate of duty without further verification where:

- a. The verification Authority fails to respond to verification request within prescribed timelines;
- b. The verification Authority does not provide the requested information in the manner as provided in this rule read with the Rules of Origin; or

(c) The information and documents furnished by the Verification Authority and available on record provide sufficient evidence to prove that goods do not meet the origin criteria prescribed in the respective Rules of Origin.

Rule 7. Identical goods:

(i) Where it is determined that goods originating from an exporter or producer do not meet the origin criteria prescribed in the Rules of Origin, the Principal Commissioner of Customs or the Commissioner of Customs may, without further verification, reject other claims of preferential rate of duty, filed prior to or after such determination, for identical goods imported from the same exporter or producer.

- 2. Where a claim on identical goods is rejected under sub-rule (1), the Principal Commissioner of Customs or the Commissioner of Customs shall,
 - a. Inform the importer the reasons of rejection in writing including the detail of the cases wherein it was established that the identical goods from the same exporter or producer did not satisfy the origin criteria; and
 - b. Restore preferential tariff treatment on identical goods with prospective effect, after it is demonstrated on the basis of information and documents received, that the manufacturing or other origin related conditions have been modified by the exporter or producer so as to fulfill the

origin requirement of the Rules of Origin under the trade agreement.

Rule 8: Miscellaneous -

(1) ..

(2) Where it is established that an importer has suppressed the facts, made wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.

3.2. Further, as per para 7.2 of the **Circular No. 38/2020-Customs dated 21.08.2020** which prescribes the guidelines regarding implementation of the Section 28DA of the Customs Act, 1962 and CAROTAR, 2020:

7 . 2 Where the information requested in terms of rule 6 is received, the proper officer should within the prescribed timelines either restore preferential claim or issue notice for denying the claim in terms of section 28DA, read with section 28 of the Act where required, in order to conclude the verification.

7.3 Where a claim for preferential rate of duty is denied, the COO should be forwarded to the nodal point in the Board for record and onward communication to the exporting country, where required.

3.3. Further, **Section 28DA** of the Customs Act, 1962 prescribes the procedure regarding claim of preferential rate of duty. Relevant portion of the section 28DA are reproduced herein under:

4. *Where importer fails to provide the requisite information for any reason, the proper officer may,-*
 - i. *cause further verification consistent with the trade agreement in such manner as may be provided by rules;*
 - ii. *pending verification, temporarily suspend the preferential tariff treatment to such goods:*

Provided that on the basis of the information furnished by the importer or the information available with him or on the relinquishment of the claim for preferential rate of duty by the importer, the Principal Commissioner of Customs or the Commissioner of Customs may, for reasons to be recorded in writing, disallow the claim for preferential rate of duty, without further verification.

5. Where the preferential rate of duty is suspended under sub-section (4), the proper officer may, on the request of the importer, release the goods subject to furnishing by the importer a security amount equal to the difference between the duty provisionally assessed under section 18 and the preferential duty claimed:

Provided that the Principal Commissioner of Customs or the Commissioner of Customs may, instead of security, require the importer to deposit the differential duty amount in the ledger maintained under section 51A.

(11) Where the verification under this section establishes non-compliance of the imported goods with the country of origin criteria, the proper officer may reject the preferential tariff treatment to the imports of identical goods from the same producer or exporter, unless sufficient information is furnished to show that identical goods meet the country of origin criteria.

3.4 Section 111 of the Customs Act, 1962 prescribes the confiscation of improperly imported goods, which read as

(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 3 [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];

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

3.5 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 1 [not exceeding the value of the goods or five thousand rupees],

whichever is the greater;

2 [(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;]

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.]

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:

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

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

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

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

Explanation.- For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]”

8 In view of the above discussion, it appears that CoO Certificate reference No. KL-2024-MICECA-26-002451 dated 09.08.2024 used by the importer to avail the benefit of duty exemption under 046/2011 sr. no. 463 (i) Customs dated 01.06.2011 under AAFTA in case of BE No. 5037916 dated 13.08.2024 had already used and defaced for BE No. 2768445 dated 27.03.2024 at Kattupalli Chennai Custom and OOC granted on 01.04.2024.

9 . Thus, it appears that the importer had attempted to avail duty exemption benefit under Notification No. 046/2011 sr. no. 463 (i) Customs dated 01.06.2011 on the basis of used CoO and hence, it appears that FTA based duty exemption is liable to be rejected in case of above said BE. The total revenue involved in the matter is as under:

Without FTA benefit							Difference
BE No.	Value of the goods (Rs.)	BCD @ 7.5%	IGST @ 18%	SWC @10% of BCD	Total Duty	Duty Paid	
5037916 dated 13.08.24	5483200	4,11,240/-	10,60,999	41124	1513363	9,86,976	5,26,387

10. From the above, it appears that the importer has claimed inadmissible benefit of exemption from the Customs Duty by using CoO Certificates

which were already used by the another importer at Kattupalli Chennai Custom Thus, the importer has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 read with CAROTAR Rules, 2020. The inadmissible claim of FTA benefit is now required to be rejected in terms of section 28DA of the Customs Act, 1962 read with Circular No. 38/2020-Customs dated 21.08.2020 and CAROTAR Rules, 2020.

These acts of omission and commission on the part of importer has made the goods liable for confiscation under Section 111(o) & Section 111(m) of the Customs Act, 1962 for non-observance of the conditions laid down for exemption from the applicable duty and the importer has rendered themselves liable for penal action under Section 112 (a) (ii) of Custom Act, 1962 at Kattupalli Chennai Custom for already fake CoO Certificates.

11. Furthermore, it appears that by claiming inadmissible benefit of FTA based duty exemption, the importer has also short levied the duty amounting to Rs. 5,26,387/- in case of above BE, which is now required to be recovered along with interest by way of re-assessment of the BEs.

PERSONAL HEARING

12. The importer M/s. Aadi Overseas vide letter dated 02.09.2024 has stated that they do not want any Personal Hearing in the matter and also requested that they are unaware of this fake CoO. They are ready to take the delivery of goods without CoO benefit and ready to pay the custom duty to save detention & demurrage charges. Hence, I proceed to decide the case on the basis of documentary evidence available on case records.

DISCUSSION & FINDINGS

13. I have carefully gone through the facts of the case, documents placed before me and submission made by the importer. The importer M/s. Aadi Overseas had imported “CPVC Compound under CTH-39049010” under Bill of Entry No. 5037916 dated 13.08.2024 by availing of Notification No. 046/2011-Customs sr. no. 463 (I) (as amended time to time) and produced CoO certificate No. KL-2024-MICECA-26-002451 dated 09.08.2024 of MALAYSIA-INDIA COMPREHENSIVE ECONOMIC COOPERATION AGREEMENT (MICECA) issued by Ministry of Investment, Trade and Industry, Malaysia while submitting the above said Bill of Entry. However the benefit of Notification No. 046/2011-Customs is available provided that the goods are of Malaysian Origin in accordance with provision of CAROTAR Rules, 2020.

14. I find that the said CoO certificate was sent for verification by TSK section, CH Mundra and they reported that CoO appears to be manually signed and not matching with records available to this section whereas on routine process, all CoOs received in TSK section issued by Malaysia seems to be digitally signed and it appears not to be duly signed by the

Supplier/Export of Malaysia at Column 11 of said CoO. The same CoO reference No. KL-2024-MICECA-26-002451 has been issued for KATTUPALLI Port (Chennai) on 19.03.2024 to M/s. Omya India Pvt. Ltd., Kattupali Road, (IEC:0305016466). The said CoO has been sent to TSK, Chennai Customs with request to verify whether the CoO reference no. KL-2024-MICECA-26-002451 has been utilized or otherwise. In reply via mail dated 27.08.2024, TSK, Chennai Custom stated that on verification of the Bills of entry in ICES, it was found that a BE 2768445 dated 27.03.2024 has been filed claiming the below mention CoO KL-2024-MICECA-26-002451 issued on 19th March 2024 at Kattupalli. CoO has been defaced and BE OOC was given on 01.04.2024.

15. Further, I find that the importer M/s. Aadi Overseas filed a Bill of Entry No. 5037916 dated 13.08.2024 for clearance of imported goods declared as "CPVC Compound under CTH-39049010" The above said Bill of Entry was filed on the basis of self-assessed declarations for the imported goods having gross weight 54542 Kgs and total declared assessable value of Rs. 54,83,200/- for clearance of aforesaid goods by availing benefit on the basis of Country of Origin certificate under Notification No. 46/2011-Customs dated 01.06.2011. The benefit under Notification No. 046/2011-Customs dated 01.06.2011 is available provided that the goods are imported into the Republic of India from a country listed in Appendix I of the said Notification (Malaysia is one of countries falling under Appendix-I) in accordance with provision of Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 provides the method and manner of implementation of The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020).

16. From the available evidences as discussed in above paras, I find that the said importer has wrongly availed benefit of Notification No. 46/2011-Customs dated 01.06.2011 by using COO Certificate which was already used at Kattupalli Chennai Custom. Thus, the importer has contravened the provisions of Section 17 and Section 46 of the Customs Act, 1962 by using forged/counterfeited COO Certificates as they had mis-declared the Country of Origin as Malaysia in the declaration of Bills of Entry and thereby, the importer has wrongly availed/ taken the country of origin benefit knowingly and intentionally to evade Customs duty. I find that the indulging of mis-declaration and suppression of facts, the importer has contravened the provisions of section 46(4) of Customs Act, 1962 as they did not declare the particulars pertaining to Country of Origin. All these acts on the part of the importer has rendered the imported goods liable for confiscation under Section 111(o) & Section 111(m) of the Customs Act,1962.

17. I find that importer M/s. Aadi Overseas in their letter dtd. 02.09.2024 has stated that they filed the subject Bill of Entry with the CoO benefit

from Malaysia. But now they have come to know from the custom officials that the CoO is fake and cannot be verified. They have also stated that they are totally unaware of this fake CoO. They also stated that they are ready to take the delivery of goods without CoO benefit and ready to pay the custom duty to save detention & demurrage charges.

18. Now, I proceed to consider the proposal of penalty under Section 112 (a) of the Customs Act, 1962 against the importer. I find that applicable customs duty on assessable value of Rs. 54,83,200/- of imported goods comes to Rs.15,13,363/- instead of Rs.9,86,976/- as declared in the said BE which resulted into short levy of customs duty amounting to Rs.5,26,383/- therefore, the Bill of Entry No. 5037916 dated 13.08.2024 is required to be re-assessed under Section 17(4) of the Customs Act, 1962. I find that they produced CoO Certificates which was already used to avail benefit of Notification No. 46/2011-Customs dated 01.06.2011. Thus, the country of origin produced is in violation of Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 provides the method and manner of implementation of The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020). Hence, I find that the importer has stated that they are unaware about fake CoO but they have attempt to avail benefit to evade the custom duty. These acts of omission and commission on the part of importer has made the goods liable for confiscation under Section 111(o) & Section 111(m) of the Customs Act, 1962.

19. In the inadmissible claim of FTA benefit is now required to be rejected in terms of section 28 AD of the Customs Act, 1962 read with Notification No. 046/2011-Customs under the provision of Notification No. 81/2020-Customs (N.T.) dated 21.08.2020 provides the method and manner of implementation of The Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 (CAROTAR, 2020).

20. I find that the importer has knowingly and intentionally produced the fake CoO to the customs authority which they knew about fake CoO in respect of the imported goods. Hence, for the said act of contravention on their part, the importer is liable for penalty under section 114AA of the Customs Act, 1962.

21. Section 125(1) of the Customs Act, 1962 provides that "Whenever confiscation of any goods is authorized by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the 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 an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit".

22. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject imported goods.

23. In view of the forgoing discussion and findings, I pass the following Order

ORDER

- i. I hereby reject the Country of Origin Certificate submitted by the importer purposefully, knowingly and intentionally for fraudulently claiming and availing Customs duty benefit covered under Bill of Entry No. 5037916 dated 13.08.2024.
- ii. I order to recover the total applicable customs duty on re-assessed value (Rs. 54,83,200/-) of imported goods comes to Rs.15,13,363/- instead of Rs.9,86,976/- as declared in the said BE which resulted into short levy of customs duty amounting to Rs.5,26,383/- and order to re-assess the Bill of Entry No. 5037916 dated 13.08.2024 accordingly under Section 17(4) of the Customs Act, 1962.
- iii. I order to charge and recover interest from the Importer Aadi Overseas on the confirmed duty at sr. no. (ii) above under section 28AA of the Customs Act, 1962.
- iv. I order for confiscation of impugned goods "CPVC Compound" totally weight 54542 Kgs, valued of Rs. 54,83,200/- covered under Bill of Entry 5037916 dated 13.08.2024 under Section 111(o) & Section 111(m) of the Customs Act,1962. I offer the same for redemption upon payment of fine of Rs. 5,50,000/- under section 125 (i) of the Custom Act, 1962.
- v. I impose penalty of Rs. 60,000/- on the importer Aadi Overseas under section 112 (a) (ii) of the Customs Act, 1962 in respect of Bill of Entry mentioned as above.
- vi. I impose penalty of Rs. 1,00,000/- on the importer Aadi Overseas under section 114AA of the Customs Act, 1962 in respect of Bill of Entry mentioned as above.

24. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms

of any provision of the Customs Act, 1962 and/ or any other law for the time being in force.

(Amit Kumar Mishra)
Additional Commissioner,
Custom house Mundra

Date 27.09.2024

By REGD. POST A.D / Hand Delivery

To

M/s. Aadi Overseas (IEC No. 0507036689)
situated at Prop No. 43, Pocket B Sector-4,
Bawana Industrial Area, New Delhi-110039.

Copy to:

1. The Principal Commissioner of Customs, Custom House, Mundra.
2. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
3. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
4. The Deputy Commissioner of Customs (Gr-IIG), Custom House, Mundra.
5. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
6. The Deputy Commissioner of Customs (Audit), Custom House, Mundra.
7. Guard File