

 <p style="text-align: center;"><b>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,</b>  <b>सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421</b>  <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b>  <b>CUSTOM HOUSE: MUNDRA, KUTCH-370421</b></p> 	
A. File No.	: F. No. CUS/APR/BE/MISC/49/2023-Gr2-O/oPr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/101/2023-24
C. Passed by	: Smt. Mukesh Kumari, Additional Commissioner of Customs, Custom House, Mundra.
D. Date of order /Date of issue	: .06.2023
E. Show Cause Notice No. & Date	: Waiver requested by importer vide letter dtd. 26.05.2023
F. Noticee(s)/Party/ Importer	: M/s Sharad Patel Recycling Company (IEC : AEHFS7940G)

1. यह मूल आदेश संबंधित 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/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद 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/1266658/2023

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 Sharad Patel Recycling Company (IEC AEHFS7940G), having registered address at 922/1, Giramtha, Daskroi, Ahmedabad (hereinafter referred to as “importer”) imported consignments of goods declared as “Plastic Regrind” (hereinafter referred to as “impugned goods” for the sake of brevity) having weight 26540 kgs and ‘Plastic Reprocess Graunles’ having weight 2010 kgs vide Bill of Entry No. 3852276 dated. 22.12.2022 through Custom Broker M/s Kashish Impex.

2 Whereas the impugned goods declared as ‘Plastic Regrind’ weighing 26540 kgs having declared assessable value of Rs. 14,57,536 /- (Rupees Fourteen Lakh Fifty Seven Thousand Five Hundred and Thirty Six only) and applicable custom duty of Rs. 4,04,247 /- (Rupees Four Lakh Four Thousand Two Hundred Forty Seven 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 impugned goods under HSN Code 39012000 having basic custom duty @7.5%, SWS @10% and IGST @18%.

4 . Whereas as per the RMS instructions the items under import appeared to be deliberately mis-declared by inclusion of words denoting inferior quality, though the goods may be prime materials and the RMS instructions suggested to get the goods examined to check factual veracity of description and quantity before finalizing value.

5. Accordingly the FAG officer had given order for First Check Examination of the goods with directions to the docks officer to draw sample and forward the same to testing to CRCL, Kandla for testing to ascertain the importability of the said goods.

6. Whereas, the goods were sent to CRCL, Kandla in order to ascertain the following parameters:

- i. composition,
- ii. nature,
- iii. whether the goods are other than scrap/waste,

I/1266658/2023

iv. whether the goods are as declared in the import documents, to ascertain whether the goods are single thermoplastic.

7. Whereas, the testing report given by CRCL, Kandla after chemical examination revealed that the goods are other than plastic regrind and other than single thermoplastic. The CRCL, Report is as follows:

The sample as received is in the form of plastic cut pieces of assorted colours (light blue, off white, green, yellow, red, light red, sky blue and grey) of irregular sizes and shapes. It is composed of colours- light blue & off white- poly propylene (25.3%) and Green, yellow, red, light red, sky blue and grey- polyethylene (74.7%) [HDPE]. It is other than plastic regrind. It is other than single thermoplastic

8. Whereas, the test report given by CRCL, it was noticed that two thermoplastics namely Propylene (25.3 %) and Ethylene- HDPE (74.7%) were found. Further, as per the test report the impugned goods were found other than regrind. However, it has not been confirmed by the lab whether the subject goods are other than scrap/waste.

9. Whereas, the importer expressed dis-satisfaction with the test report and requested for re-testing of the impugned goods. Subsequently, after the approval of competent authority the goods were forwarded to CRCL, Delhi for re-testing.

10. Whereas, CRCL, Delhi vide its letter F. No. 27-Cus/C-107/22-23/2893 dtd. 12.05.2023 has given the re-test report as follows:

The sample is in the form of cut pieces of assorted colours, shapes and sizes. It is mainly composed of pigmented polyethylene and polypropylene.

Polyethylene (% by mass) = 74.48

Polypropylene (% by mass) = Balance

It is other than single thermoplastic. It is scrap/waste.

11. Hence, as per the reports given by CRCL, Delhi it was confirmed that the impugned goods are waste/scrap. The test report also specified that the goods are not single thermoplastic.

12. Whereas the importer has self-classified the goods under HS Code 3901 2000 of the Custom Tariff Act, 1975. The declared HS Code pertains to polymers of ethylene, in primary forms, and more specifically Polyethylene having a specific gravity of 0.94 or more.

13. Whereas, as per the test report the goods corresponds to HS Code 3915 1000 of the Custom Tariff Act, 1975. The HS code pertains to waste, parings and scrap, of plastics and more specifically of polymers of ethylene.

14. Whereas, as per the import policy prescribed by the *Directorate General of*

I/1266658/2023

*Foreign Trade, Ministry of Commerce and Industry, Government of India the import of plastic waste is restricted .*

15. Whereas, as per the test report the goods are not in Primary Forms fall under the category of plastic waste and scrap. Import of plastic scrap is prohibited as per Director General of Foreign Trade Policy. Public Notice No. 392 (PN) 92-97, dated 1-1-1997. Relevant extract of which is reproduced below:

*“Attention is invited to Para 27(2) of the Handbook of Procedures (Vol. 1), 1992-97 (Revised Edition; March, 1996) according to which import of all types of plastic wastes/scrap (except PET bottle waste/scrap and animal excreta) shall not be permitted, except against a licence. The matter relating to grant of licences for import of such plastic wastes/scrap has been examined in consultation with the Deptt. of Chemicals & Petrochemicals and other Ministries and it has been decided to prescribe the following guidelines/conditions for consideration of applications for import of plastic wastes/ scrap. Applicants who wish to submit applications to the Directorate General of Foreign Trade, Udyog Bhawan, New Delhi, for grant of licence for import of plastic wastes/scrap are required to strictly comply with these guidelines/ conditions:*

*(i) Import of plastic waste/scrap (except PET bottle waste/scrap) shall be permitted only against a licence. The description/ definition of the plastic waste/scrap for this purpose would be:*

*“Plastic scrap/waste constitute those fractions generated by various plastic processing operations or those fractions generated in the production process of plastics in a plant, which have not been put to any use whatsoever and as such can be termed as virgin or new material which can be recycled into viable commercial products using standard plastic processing techniques but without involving any process of , cleaning, whereby effluents are generated” .*

*(ii) Such virgin/new Plastic scrap/waste shall be permitted for import in the following forms i.e. compressed, films in cut condition, cut tape soft waste, flakes, powders, pieces of irregular shape (not exceeding the size of 3” x3”)*

*(iii) Any other category of plastic scrap/wastes which are not covered by the description/definition as given in sub-para (i) and (ii) above shall not ordinarily be permitted. ”*

16. As per Basel No.B3 (B3010) of Schedule VI of “Hazardous and Other wastes prohibited for import" under chapter III sub-rule 6 of Rule 12 of Wastes (Management and Transboundary Movement) Rules, 2016 import of hazardous and other waste are prohibited for import in India:

I/1266658/2023

*"The following plastic or mixed plastic waste, prepared to a specification: Scrap plastic of non-halogenated polymers and co polymers, including but not limited to the following:*

*Ethylene, Styrene, Polypropylene, polyethylene terephthalate, Acrylonitrile, Butadiene, Polyacetals, Polyamides, polybutyleneterephthalate<sup>TM</sup>, Polycarbonates, Polyethers, polyphenylene sulphides acrylic polymers, alkanes C10-C13 (plasticiser), polyurethane (no, containing CFC's), Polysiloxanes, polymethyl methacrylate, polyvinyl alcohol, polyvinyl butyral, Polyvinyl acetate"*

17. Whereas, as the impugned goods were imported without authorisation and hence prohibited goods. The definition of Prohibited goods as provided under

*Section 2(33) defined the term "prohibited goods" means :*

*"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;*

18. Whereas the declared goods were found to be mis-declared in terms of description as well as HS Code. Hence, as per the provisions of sub-section 4 and 4(A) of section 46 of the Customs Act, the importer while filing the bill of entry shall declare the true contents of the goods.

19. Whereas Section 111(d) and 111(m) 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.

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

21. Therefore the importer *M/s Sharad Patel Recycling Company (IEC AEHFS7940G)* it appears that:-

(i) the classification of the impugned goods under HS code 3901 2000 is liable to be rejected and should be re-classified under HS code 3915 1000 of the Custom Tariff Act, 1975.

(ii) the impugned goods covered under Bill of Entry No. 3852276 dtd 22.12.2022 having declared assessable value of Rs. 14,57,536 /- (Rupees Fourteen Lakh Fifty Seven Thousand Five Hundred and Thirty Six only) should not be confiscated under section 111(d) and 111(m) of the Customs Act, 1962.

(iii) the Penalty should not be imposed on importer under Section 112 a (i)

of the Customs Act, 1962.

### **Defence Submission and Personal Hearing**

22. M/s Sharad Patel Recycling Company (IEC AEHFS7940G) vide its letter dtd. 26.05.2023 have requested for waiver of SCN and personal hearing and requested for re-export of the impugned goods.

### **Discussion and findings**

23. I have carefully gone through the available records and facts of the cases made by the importer as well as the department. I find that importer has requested for waiver of SCN and PH and thus 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.

24. I find that following main issues are required to be decided :

- a. Whether the description of impugned goods declared as 'Plastic Regrind (Non Hazardous & Non Toxic)' is 'Plastic Waste' or not?
- b. Whether the impugned goods declared under HS Code 3901 2000 of the Custom Tariff Act, 1975 is correctly classifiable under 3915 1000 or not?
- c. Whether the goods are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962 or not ?
- d. Whether the importer is liable for penal action under Section 112 a (i) of the Customs Act, 1962 or not ?

25. I find that the bill of entry for the impugned goods i.e. 'Plastic Regrind (Non Hazardous & Non Toxic)' 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.*

26. 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

I/1266658/2023

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;

27. 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 3901 2000 having basic custom duty @10%.

28. I find that the aforementioned Bill of Entry was interdicted by Risk Management System (RMS) with appraising instructions that items under import appear to be deliberately mis-declared by inclusion of words denoting inferior quality, though the goods may be prime materials and instructed to get the goods examined to check factual veracity of description and quantity before finalizing value.

29. I find that in view of the RMS instructions the goods were to be assessed on first check basis and docks officers were requested to draw the sample and forward to authorized lab for testing/chemical examination. Accordingly, the docks officer examined the goods in presence of the authorized representative of the importer and *Representative Sample* were sealed and forwarded to CRCL, Kandla for testing purpose.

30. I find that The CRCL, Kandla vide after chemical testing of the goods has given the following report:

*The sample as received is in the form of plastic cut pieces of assorted colours (light blue, off white, green, yellow, red, light red, sky blue and grey) of irregular sizes and shapes. It is composed of colours- light blue & off white- poly propylene (25.3%) and Green, yellow, red, light red, sky blue and grey- polyethylene (74.7%) [HDPE]. It is other than plastic regrind. It is other than single thermoplastic.*

31. I find that the importer has expressed his dis-satisfaction on the test report given by CRCL, Kandla and has requested for re-testing of the goods. The importer's request for re-testing of the goods was considered by the competent authority and accordingly the goods were forwarded to CRCL, Delhi for re-testing.

32. I find that the proper officer had also informed the importer about the option of warehousing the goods under section 49 of the Customs Act, 1962 in order to avoid

I/1266658/2023

detention/demurrage charges.

33. I find that CRCL, Delhi has given test report vide letter F. No. 27-Cus/C-107/22-23/2893 dtd. 12.05.2023 as follows:

The sample is in the form of cut pieces of assorted colours, shapes and sizes. It is mainly composed of pigmented polyethylene and polypropylene.

Polyethylene (% by mass) = 74.48

Polypropylene (% by mass) = Balance

It is other than single thermoplastic. It is scrap/waste.

34. I find that the test report given by CRCL, Delhi is in consonance with that given by CRCL, Kandla and the goods are plastic waste.

### **Legal Provisions**

35. I find that as per the provisions of section 46 of the Customs Act 1962 the importer has to declare the correct parameters of the imported goods. The relevant provision of the same is produced below:

*(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 provisions 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 imported in according with the policy framed by the Government of India.

36. I find that the classification of the goods is made on the basis of the general rules of interpretation. I find that the note 6 of chapter 39 specifies the goods that are to be covered under HSN Code 3901 and 3914. The relevant part of the same is produced below:

*6. In headings 3901 to 3914, the expression —primary forms applies only to the following forms:*



I/1266658/2023

- (a) liquids and pastes, including dispersions (emulsions and suspensions) and solutions;*  
*(b) blocks of irregular shape, lumps, powders (including moulding powders), granules, flakes and similar bulk forms.*

37. On perusal of above chapter notes I find that for the goods to be falling under 3901 the goods must be in primary forms. In other words, the goods must be other than waste/scrap.

38. I find that as per the policy Circular No. 20 /2002-2007 Dated March 12, 2003 issued by the Government of India, Ministry of Commerce & Industry, Department of Commerce, Directorate General of Foreign Trade, Udyog Bhavan, New Delhi according to which the import of all types of plastic wastes/scrap (except PET bottle waste/scrap and animal excreta) shall not be permitted, except against a licence.

39. I find that the test result given by CRCL, Kandla and CRCL, Delhi the impugned goods are plastic waste and imported without any authorization given by the competent authority.

40. I refer to note 7 of the chapter 39 of the Custom Tariff Act, 1975 which is reproduced as below:

*7. Heading 3915 does not apply to waste, parings and scrap of a single thermoplastic material, transformed into primary forms (headings 3901 to 3914).*

41. I find that since the test result has specified that the impugned goods are other than single thermoplastic and hence they are correctly classifiable under HS Code 3915. The relevant part is produced below:

3915 - WASTE, PARINGS AND SCRAP; SEMI-MANUFACTURES; ARTICLES  
 WASTE, PARINGS AND SCRAP OF PLASTICS

39151000 - Of polymers of ethylene

42. Hence, on the basis of the *test report* given by the Central Revenues Control Laboratory (CRCL) read with the relevant notes of the chapter 39 of the Custom Tariff Act, 1975 and import policy prescribed by DGFT I **hereby hold that the impugned goods declared as 'Plastic regrind' is PLASTIC WASTE.**

43. Since it has already been concluded that the imported goods are plastic waste and hence correctly classifiable under HS Code 3915, I move towards next question

I/1266658/2023

regarding classification of the goods because the test report specified that the goods are composed of two components i.e. *polyethylene*(74.48%) and *polypropylene*(25.52%).

44. Now, I once again refer to notes of Chapter 39 for ascertaining correct HS Code of the goods. The relevant note 4 of chapter 39 is produced below:

4. The expressions —copolymers covers all polymers in which no single monomer unit contributes 95% or more by weight to the total polymer content.

For the purposes of this Chapter, except where the context otherwise requires, copolymers (including co-polycondensates, co-polyaddition products, block copolymers and graft copolymers) and polymer blends are to be classified in the heading covering polymers of that comonomer unit which predominates by weight over every other single comonomer unit.

45. I find that since the composition of the impugned goods, as per the test results, are based on two different monomer units i.e. polyethylene and polypropylene; the final classification of the goods is to be made on the basis of co-monomer unit which predominates by weight. In the present case I find that polyethylene has more weight i.e. almost 75% in comparison to the polypropylene. Hence, relying on the chapter notes **I hereby hold that the impugned goods merits classification under HSN Code 3915 1000 of the Customs Tariff Act, 1962.**

46. Now, I move towards the next question that whether the impugned goods are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962 or not. The relevant para of Section 111(d) and 111(m) of the Customs Act, 1962 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: -

(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;

(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. ”

47. I find that as per the import policy described by DGFT, the plastic waste is importable only against authorization and since the impugned goods were imported without any licence/authorization the same are prohibited. Hence, **I hold that the impugned goods are liable for confiscation under section 111(d) of the Customs Act, 1962.**

48. Further, 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 the 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 the description and HS 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 3915 1000.

49. 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.***

50. I find that the importer had requested to allow re-export of the goods. I find that the Section 125 of the Customs Act, 1962 provides that whenever confiscation of any good is authorized by the Customs Act, 1962, the officer adjudging it 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 fine as the said officer thinks fit.

I find that the said provision makes it mandatory to grant an option to 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 adjudging the case which has to be exercised in view of facts and circumstances of the case. In the instant case, considering the facts, I find it appropriate to grant an option to pay fine in lieu of confiscation of the subject goods.

51. Further, the Section 125 of the Customs Act, 1962 provides that whenever

I/1266658/2023

confiscation of any good is authorized by the Customs Act, 1962, the officer adjudging it 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 fine as the said officer thinks fit.

52. I find that in the instant case, considering the facts, I find it appropriate to grant an option to pay fine in lieu of confiscation of the subject goods. However, considering the facts are impugned goods are prohibitory in nature. I give an option to the importer to re-export the same.

53. Now, I move towards final question that whether penalty should be imposed on the importer under section 112 (a) (i) 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) 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;*

54. 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 description and HSN Code has already been established. Furthermore, in view of the aforesaid discussions the goods are prohibited in nature and hence there is no impediment in invoking section 112(a)(i) of the Customs Act, 1962.

55. I also find that the importer vide its letter dtd. 26.05.2023 had requested for adjudicating the matter and allow re-export of the goods.

56. 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 imposable on importer under Section 112 a (i) of the Customs Act, 1962.***

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

**ORDER**

- A. I reject the declared classification i.e. 3901 2000 of the impugned goods declared as 'Plastic Regrind' having weight 26540 kgs imported Bill of Entry No. 3852276 dated. 22.12.2022 and I order to re-classify the same under HSN Code 3915 1000 under Custom Tariff Act, 1975.
- B. I confiscate the afore-said goods imported vide Bill of Entry No. 3852276 dtd 22.12.2022 having assessable value of Rs. 16, 27, 361 /- (Rupees Sixteen Lakh Twenty Seven Thousand Three Hundred and Sixty One only) under section 111 (d) and 111(m) of the Customs Act, 1962. However, I give an option to redeem the impugned goods for re-export purpose only, on payment of Redemption Fine of Rs.1,50,000/-(Rs. One Lakh Fifty Thousand Only.) under Section 125 of the Customs Act, 1962.
- C. I also impose the penalty of Rs.75,000/- (Rs. Seventy Five Thousand Only.) on the importer under Section 112 a (i) of the Customs Act, 1962.
53. 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 Sharad Patel Recycling Company (IEC AEHFS7940G)  
922/1, Giramtha, Daskroi, Ahmedabad

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