



OFFICE OF THE COMMISSIONER OF CUSTOMS: CUSTOM HOUSE: KANDLA,
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE,
KANDLA, KUTCH, GUJARAT.
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A	फ़ाइल संख्या/ File No.	S/20-15/Gr.IV/BE 5438456/2017-18
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/UBR/01/2018-19
C	पारित कर्ता/ Passed by	Shri U.B. Rakhe, Additional Commissioner, Custom House, Kandla.
D	आदेश की दिनांक/Date of order	06.04.2018
E	जारी करने की दिनांक/Date of issue	06.04.2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	---
G	नोटीसी/ पार्टी/इंपोर्टर Noticee/Party/Importer	M/s. Shree Hari Global Trade, Shop No.17, Ground Floor, Revenue Survey No.981, P2 City Square Shopping Centre, Anjar - 370 110.

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.2.
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 (1) के अंतर्गत प्रपत्र सीए 3-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(1)(a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 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 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 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, न्यायाधिकरण के समक्ष मांग शुल्क का 10% भुगतान करना होगा।
An appeal against this order shall lie before the Tribunal on payment of 10% 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. Shree Hari Global Traders , Anjar filed a Bill of Entry No. 5438456 dated 04.03.2018 for import of 81.880 MTs. of Heavy Melting Scrap falling under 72044900 of Customs Tariff Act, 1975. As per the details available in the Bill of Lading No. 770329458 dated 03.02.2018 , the declared cargo is HMS containing in four containers viz. (1) MSKU 5612468 (2) MSKU 7997374 (3) PONU 0045736 (4) PONU 0127201 having a total weight of 81.800 Mts. Further, the Pre-inspection Certificate dated 24.01.2018 issued by M/s. Tobby Impex Pvt. Ltd., New Delhi declaring the description of the cargo as H.M.S. Scrap weighing 81.880 M.Ts. The Invoice No. NOFZE/17-18/302 dated 03.02.2018 and the Packing List dtd. 03.02.2018 clearly stating that the cargo is Heavy Melting Scrap. The said Bill of Entry was assessed under second check.

2. During the examination of the cargo, it appears to the docks examination that the cargo also consists of other than the declared. Therefore, they called the Chartered Engineer for detailed examination of the goods. The Dock Examination carried out the detailed examination of the cargo along with the authorized Chartered Engineer Shri Anwar Y. Kukud. The Chartered Engineer vide his report ref. No. AYK:INSP:0574:2017 dated 15.3.2018 reported that :

“ On 14th March, 2018 we have inspected the above consignment in bulk, lying in open at A.V. Joshi CFS, Gandhidham . The said inspection was carried out in the presence of representative of CHA M/s. Lara Exim Pvt. Ltd., Gandhidham. They had tendered Heavy Melting Scrap imported under Bill of Lading No. 770329458 dtd. 03.02.2018, which were said to be out of the imported scrap under invoice no. NOFZE/17-18/302 dated 03.02.2018 for 81.880 M.T. in 4 containers.

We hereby additionally certify that at the time of the visual inspection, the Scrap were observed to be used and damaged M.S. Material with some electric motors and scraped engine units, which cannot be used in its as is where is condition. Further, during our visual inspection, after detailed inspection of the copper scraps from the scrap electric motors, it seems that out of the entire consignment approx. 800 Kgs. of Copper in electric motors and approx. 1200 Kgs. of Aluminium Scrap will be there in entire lot.”

3. From the above, it appears that out of entire consignment there was approximate 800 Kgs. of Copper Scrap and approximate 1200 Kgs. Aluminium Scrap i.e. other than the declared goods of Heavy Melting Scrap as declared in all the Import Documents. Also since the cargo consists of other than declared goods , to ascertain the value of mis-declared items of Copper Scrap and Aluminium Scrap , relevant LME Price at the Bill of Lading date has been taken for calculation. Accordingly, the value of 800 Kgs. Copper Scrap at the rate of 7025 USD per M.T. works out to be Rs.375661/- and the value of 1200 Kgs. of Aluminum Scrap at the rate of 2290 USD per MT works out to be Rs.1,83,686/- and the total of the mis-declared goods comes to the tune of Rs.559347/-. Therefore, it appears that the Importer had mis-declared the goods of 800 Kgs. of Copper Scrap and 1200 Kgs. Aluminium Scrap as Heavy Melting Scrap. Thus it appears that the

Mis-declared goods of 800 Kgs. of Copper Scrap and 1200 Kgs. of Aluminum Scrap totally valued at Rs.559347/- are required to be held as offending nature and accordingly the same are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

4. Further, it appears that the Importer has mis-declared the goods i.e. 800 Kgs. of Copper Scrap and 1200 Kgs. of Aluminum Scrap as Heavy Melting Scrap and thereby failed to file true declaration before the department and mis-declared the goods. Therefore, they are also liable for penalty under Section 112(a) of the Customs Act, 1962.

5. The importer vide their letter dated 16.3.2018 requested for waiver of Show Cause Notice and Personal Hearing.

Discussion and Findings :

6. I have carefully gone through the records of the case. The importer vide their letter dated 16.3.2018 requested for waiver of Show Cause Notice and Personal Hearing. Accordingly, I proceed to adjudicate the case on the basis of records available and on merits.

7. I find from the records that M/s. Shree Hari Global Traders , Anjar through their Customs Broker M/s. Lara Exim filed a Bill of Entry No. 5438456 dated 04.03.2018 for import of 81.880 MTs. of Heavy Melting Scrap in four containers falling under 72044900 of Customs Tariff Act, 1975. I also find from records that during the examination of the cargo by Docks Examination along with the Chartered Engineer, it was noticed that the Cargo Contains approximately 800 Kgs. Copper Scrap and 1200 Kgs. Aluminium Scrap i.e. other than the declared cargo of Heavy Melting Scrap declared by the Importer in all the import document. The Chartered Engineer Shri Anwar Y. Kukud submitted a detailed reported vide his report dated 15.03.2018 stating that out of the entire consignment approx. 800 Kgs. of Copper and 1200 Kgs. of Aluminium Scrap will be there in entire lot. However, the CE did not give any value for the said mis-declared goods.

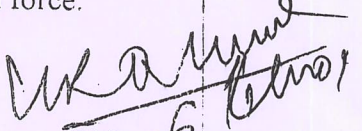
7.1 Thus, I find that since the cargo also consists of other than the declared goods, it is a clear case of Mis-declaration on the part of the Importer with respect to Approximate 800 Kgs. of Copper and 1200 Kgs. of Aluminium Scrap. I also find that the Scrap of Aluminium and Copper are being assessed on the basis of LME price and accordingly the value of 800 Kgs. of Copper Scrap worked out to be Rs. 375661/- and the value of 1200 Kgs. Aluminium Scrap worked out to be Rs.1,83,686/- and the total value of mis-declared goods comes to Rs.559347/- . Therefore, I hold that the 800 Kgs. of Copper Scrap and 1200 Kgs. of Aluminium Scrap totally valued at Rs.559347/- are liable for confiscation under Section 111(m) of the Customs Act, 1962. I also hold that said Copper Scrap and Aluminium Scrap are required to be classified under appropriate Chapter Heading and assessed accordingly.


8. Further, I also find that the Importer has failed to file the true declaration before the department mis-declared the goods of 800 Kgs. of Copper Scrap and 1200 Kgs. of Aluminium Scrap, as Heavy Melting Scrap and thereby contravened the provisions under the Customs Law. Therefore, I hold that for this act of Mis-declaration, the importer is also liable for penalty under Section 112(a) of the Customs Act, 1962.

In view of the aforesaid discussion and findings, I accordingly pass the following order :

: ORDER :

1. I order for confiscation of goods i.e. 800 Kgs. Copper Scrap and 1200 Kgs. of Aluminium Scrap totally valued at Rs.5,59,347/- under Section 111(m) of the Customs Act, 1962. However, I given an option to the importer to redeem the same on payment of fine of Rs.1,40,000/- (Rupees One Lakh Forty Thousand Only) under Section 125 of the Customs Act, 1962.
2. I also impose a penalty of Rs.50,000/- (Rupees Twenty Five Thousand only) on the importer under Section 112(a) of the Customs Act, 1962.
3. I also order that the said goods i.e. 800 Kgs. of Copper Scrap and 1200 Kgs. of Aluminium Scrap are classifiable under appropriate CTH of Customs Tariff Act, 1975 and duty to be assessed accordingly.
4. This order issued without prejudice any other issued or may be issued against the importer under the Customs Law or any other law time being in force.


(U.B. RAKHE)


Additional Commissioner (Import Gr.)
Custom House, Kandla.

F.No.S/20-15/Gr.IV/BE 5438456/2017-18

Date : 06.04.2018

By R.P.A.D. :

M/s. Shree Hari Global Trade ,
Shop No.17. Ground Floor,
Revenue Survey No.981,
P2 City Square Shopping Centre ,
Anjar - 370 110.

Copy to :

1. The Deputy Commissioner, (RRA Section), Customs House, Kandla.
2. Guard File.


09/04/18

