



Office of the Commissioner of
Customs,

New Custom House, Near Balaji
Temple,

New Kandla – 370 210.

Tel. 02836-271468-469, Fax, 02836-
271467

S/20-29/MC/OIO/2018-19,
सीमा शुल्क आयुक्त का कार्यालय,

नया सीमा शुल्क सदन,

नया कांडला – ३७० २१०.

दूरभाष – ०२८३६ २७१४६८-४६९,

फैक्स – ०२८३६ २७१४६७.

A	File No.:	S/20-29/MC/OIO/2018-19
B	Order-in-Original No.:	KDL/ADC/AK/24/2018-19
C	Passed by:	Ajay Kumar Additional Commissioner of Customs, Custom House, Kandla
D	Date of order:	13.11.2018
E	Date of issue:	13.11.2018
F	Importer:	M/s. Madhur Corporation, Shed 23, Gopinath Ind Park Part-I, Opp. Maruti Nandan Estate, Odhav Ahmedabad

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), having office at 7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009 in terms of Section 128 of the Customs Act, 1962. It should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
8. Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
9. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

Sub.: M/s. Madhur Corporation, Shed 23, Gopinath Ind Park Part-I, Opp. Maruti Nandan Estate, Odhav Ahmedabad had filed B/E No.8199395 dated 25.09.2018-reg

BRIEF FACTS OF THE CASE

1. M/s. Madhur Corporation, Shed 23, Gopinath Ind Park Part-I, Opp. Maruti Nandan Estate, Odhav Ahmedabad (IEC5216928715 & PAN ASSPK1155A) has filed Bill of Entry No. 8199395 dated 25.09.2018 for clearance of 25000 Kgs (01 Container) of "PE Floor Sweeping" through their Customs Broker, M/s. MAT Shipping, Gandhidham. The importer classified the goods under CTH 39011090. The declared assessable value of the goods comes to Rs.1896487.50. The goods were given first check with the order to draw sample vide Test Memo No.2843 dated 26.09.2018 and forward the same to CRCL, Kandla for testing.

1.1 In the test report the question were asked regarding the nature & composition of goods, description of goods and verification of goods "whether it is Floor Sweeping or Otherwise". The Test Report bearing No. 2843 dated 28.09.2018 received on 26.10.2018 from CRCL, Kandla states that "the sample is in the form of heterogeneous mixture of plastic pellets and granules of assorted shapes and sizes along with a few leaning tail end. It is composed of ethylene based polymeric compound". From the said report, it was not clear that whether the said goods are "PE Floor Sweeping" or otherwise. Hence, a letter No.S/20-03/Gr-II/Misc/2016-17 dated 30.10.2018 was written to CRCL, Kandla for the clarification regarding the goods are "PE Floor Sweeping" or otherwise. In reply of the same the Joint Director, CRCL, Kandla vide their letter F.No.KCL/Misc-corr/LDL-Mundra/1/08/08-09 dated 31.10.2018 submitted that "the sample does not containing extraneous matter and composed of single type of Polymeric Compound i.e. Polyethylene type. Based on this finding the sample could not be considered as floor sweeping material."

1.2 It is evident from the Test Report that the product is "single type of Polymeric Compound i.e. Polyethylene type" (Prime Item) falling under tariff heading 39011090 against the description of "PE Floor Sweeping" (Low graded) classified under CTH No. 39011090 as declared by the Importer. The goods of Prime Item falling under tariff heading 39011090 are not allowed get discount of 40% over and above the Platt's price as per Standing Order No.7493/1999 issued by the Jawaharlal Nehru Custom House (Nhava-Sheva), Mumbai.

1.3 The importer in this case has not submitted the test analysis report of the goods from exporter country.

1.4 In view of the above, it is found that the impugned goods described as "single type of Polymeric Compound i.e. Polyethylene type" classifiable under Tariff heading 39011090 should be assessed at prime rate i.e more than Rs. 1896487.50 and should not get any discount of 40% over and above the Platt's price as per Standing Order No.7493/1999 issued by the Jawaharlal Nehru Custom House (Nhava-Sheva), Mumbai. Therefore, it is the case of improper importation and violation of section 46 and 14 of the Customs Act, 1962. Hence, the goods are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962 and the importer for such acts of commission/omission is liable for penal action under Section 112 of the Customs Act, 1962. Vide letter dated 05.11.2018, the importer has submitted that they do not want any show case notice or personal hearing in this matter. In view of above submission party has requested for release of goods at the earliest.

SHOW CAUSE NOTICE & PERSONAL HEARING

2. The importers M/s Madhur Corporation, Surat vide its letter reference NIL dated 05.11.2018, accepted that as per Test Report No. 2843 dated 03.10.2018, their imported goods are not confirming the description and requested to adjudicate their case in lenient way as they have already incurred detention/demurrage charges on this shipment. They further requested to waive the personal hearing and show cause notice and decide the matter on merit. I find that the condition of principle of natural justice has been complied.

DISCUSSION & FINDINGS

3. I have carefully gone through the records of the case and submission made by the importers vide its letter dated 05.11.2018. I find that the importers have waived the issuance of show cause notice and its right of personal hearing, hence I proceed to decide the case on the basis of documentary evidences available on record. I find that the importers have imported 25000 Kgs of goods and declared their goods as "PE Floor Sweeping", amounting to Rs. 18,96,487.00 vide Bill of Entry no. 8199395 dated 25.09.2018 under section 46 of the Customs Act, 1962 (As amended). As the goods were declared as Floor Sweeping, the goods were examined on 1st check basis and the samples were forwarded for Test vide Test Memo No. 2843 dated 26.09.2018 to CRCL, Kandla. Vide its Report dated 26.10.2018 CRCL, Kandla reported as under:

"The sample is in the form of heterogeneous mixture of plastic pellets and granules of assorted shapes and sizes along with a few leaning tail end. It is composed of ethylene based polymeric compound"

From the report of CRCL, Kandla above, it was not clear as to whether the imported and declared goods are "PE Floor Sweeping" or not? Hence, a letter F.No. S/20-03/Gr-II/Misc/2016-17 dated 30.10.2018 was issued to CRCL, Kandla to clarify categorically as to goods are "PE Floor Sweeping" or not. The Joint Director, CRCL, Kandla vide their letter F.No. KCL/Misc-corr/LDL-Mundra/1/08-09 dated 31.10.2018 reported as under:

"The sample does not containing extraneous matter and composed of single type of Polymeric Compound i.e Polythene type. Based on this finding the sample could not be considered as floor sweeping material."


From the above report, it is evident that the goods imported are single type of Polymeric Compound i.e Polyethylene type, which are not to be considered as Floor Sweeping as declared under section 46 of the Customs Act, 1962 (As amended). The valuation of goods for Assessment of Customs Duty is governed by Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Standing Order 44/2016 dated 08.07.2016 issued by Commissioner of Customs, JNCH and Platt Rates are also helping in determining the value of the Plastic Items. The value of "Floor Sweeping may be less than the value of the Prime material. As the goods have been reported to be Prime material, the valuation of the goods are to be done with respect to Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Standing Order 44/2016 ibid. The price of the Prime goods as per contemporaneous import of the similar goods is Rs.92.06

per Kg, which comes to Rs. 23,01,500.00, whereas the importers have declared their price Rs. 75.86 per Kg. Therefore the value of the prime goods is to be taken Rs. 23,01,500.00 under Rule 5 of the Customs Valuation Rules, 2007 after rejecting the declared value under Rule 12 ibid.

3.1 I find by declaring "Floor Sweeping" in the Import Documents i. e Bill of Entry under section 46 of the Customs Act, 1962, they also mis-declared value of the imported goods under Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and therefore violated the provisions of Section 46 and 14 of the Customs Act and Valuation Rules, 2007. I find that by doing so, the goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962(As amended) and the importers are also liable for penal action under section 112 of the Customs Act, 1962.

ORDER

- a. I reject the declared value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to load the value to the tune of Rs.16.20 per Kg on the declared value for levying the duties of Customs.
- b. I order to confiscate the mis-declared goods as "PE Floor Sweeping" as against Prime Goods under section 111(d) and 111(m) of the Customs Act, 1962, however, I give an option to redeem the goods on payment of redemption fine of Rs. 1,50,000.00 (Rupees One Lakh Fifty Thousand only) under section 125 of the Customs Act, 1962.
- c. I also impose penalty of Rs. 1,00,000.00 (Rupees One Lakh only) on Importers M/s Madhur Corporation, Surat under Section 112 of the Customs Act, 1962.


(AJAY KUMAR)
Addl. Commissioner
Customs, Kandla.

Date : 13.11.2018

BY REGD POST A.D.
F. No. S/20-29/MC/OIO/2018-19

To,
M/s Madhur Corporation,
Shed No. 23, Gopinath Ind. Park,
Part-1, Opposite Marutinandan Estate,
Odhav, Ahmadabad, Gujarat-382415

Copy to:

1. The Commissioner of Customs, Kandla.
2. The Assistant Commissioner of Customs (RRA), Customs, Kandla.
3. The Assistant Commissioner of Customs, Tax Recovery Cell, Kandla.
- ✓ 4. Guard File.