

**OFFICE OF THE COMMISSIONER OF CUSTOMS: CUSTOM HOUSE:  
KANDLA,  
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE,  
KANDLA, KUTCH, GUJARAT.  
PHONE : 02836-271468-469 FAX : 271467**

A	फ़ाइल संख्या/ File No.	S/20-08/Aadya/GR.II/2017-18
B	आदेश में मूल सं./ Order-in-Original No.	<b>KDL/ 21 /UBR/ADC/GR.II/2017-18</b>
C	पारित कर्ता/ Passed by	Shri U.B. Rakhe, Additional Commissioner, Custom House, Kandla.
D	आदेश की दिनांक/Date of order	29.01.2018
E	जारी करने की दिनांक/Date of issue	29.01.2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & dt	----
G	नोटीसी/ पार्टी/इंपोर्टर Noticee/Party/Importer	M/s. Aadya Minerals & Resources Enterprises, 401, Iscon Atria-2, Gotri, Vadodara

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 (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 7<sup>th</sup> 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. Aadya Minerals & Resources Enterprises has filed a home consumption bill of entry No.4682671 dated 04.01.2018 through the Customs Broker M/s. Aman Seatrans Private Limited for clearance of 21.210 MTs of goods declaring as “Floor Sweeping PVC (Mass Grade)” under CTH 39041090, covered under Invoice No. 01/AEI-549, dtd.15.11.2017 declaring the value as 745 USD per M.T. (C&F basis).

The said Bill of Entry was processed through first check as requested by the authorized Custom Broker. The commodity “Floor Sweeping PVC (Mass Grade) was imported through this port for the first time and to ascertain the precise nature, the composition /grade, for helping to have proper valuation, the order of drawing Representative Sealed Sample were given. Accordingly, the Representative Sealed Sample of the goods were drawn and forwarded to the Central Chemical Laboratory, Kandla vide Test Memo No.1022545, dt.08.01.2018 for the ascertaining the nature, composition, description of the goods.

The Central Chemical Laboratory vide Test Report No.3446, dtd.18.01.2018 submitted their test report as under:

***“The sample is in the form of white powder. It is composed of Ply Vinyl Chloride (Prime Suspension Grade)”.***

The goods are “Floor Sweeping PVC of Prime Suspension Grade and not of Mass Grade as declared. The importer has mis-declared the goods as “Floor Sweeping PVS (Mass Grade)” and classified under CSH No. 39041090. As per relevant CRCL Test Report dt. 18.01.2018, it is seen that goods are of Prime suspension grade, hence the same are correctly classifiable under 39041020. Further on verification of the PLATTS data the price of PVS Suspension Grade of United States , during the material period is in the range of 938 - 942 USD Per M.T. Moreover, the Prime Suspension grade material of USA Origin attracts Anti-Dumping Duty under Notification No. 27/2014 ADD dated Sl. No. 26 @115.54 USD PMT.

Therefore, in the present case, the Classification required to be changed from 39041090 to 39041020, the value to be enhanced from the declared CF value of 745 USD to 942 USD per M.T and Freight being taken as USD 700. Accordingly the total assessable value of the Goods after enhancement comes to Rs.13,56,708/- (@942 USD CF PMT) and the duty (works out to be Rs. 5,55,550/- ( including the ADD Rs.159044/-).

The comparative details are as under :

Sr.No.	Details	declared	Enhanced/modified
01	CTH	39041090	39041020
02	Assessable Value	10,37,051/-	13,56,708/-
03	Duty	281202/-	3,96,506/-
04	Anti Dumping Duty	--	1,59,044/-
05	Total Duty	<b>2,81,202/-</b>	<b>5,55,550/-</b>

On going through the above table, the differential duty works out to be **Rs. 2,74,348/-**.

Since the importer has mis-declared the goods, the same are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and rendering themselves liable for penalty under

Section 112(a) of the Customs Act, 1962. The importer vide their letter dated 22.01.2018 requested for waiver of Show Cause Notice and Personal hearing in the matter and also gave their consent for enhancement of value on account of change in scenario. They further requested to decide the matter on merits.

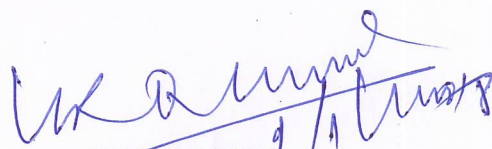
### DISCUSSION & FINDINGS:

Since the importer has waived off the servicing of the show cause notice and the personal hearing in this matter, I proceed to decide the case based on the facts available in the case records and submissions. I have carefully gone through the case records and the documents submitted. The CRCL Test Report dated 18.01.2018 very clearly indicates that the goods as imported are the goods are composed of Poly Vinyl Chloride (Prime Suspension Grade) as against the declared description of the Floor Sweeping PVC (Mas Grade). The goods are also liable for enhanced valuation and the same are liable for chargeable to Anti Dumping Duty as per Notification No.27/2014 ADD, dated 13.06.2014 Sr.No.26 @USD 115.54 PMT. The goods as imported are therefore mis-declared under section 111(m) of the Customs Act, 1962 and the same are liable for confiscation.

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

### ORDER

- (i) The goods valued at Rs.13,56,708/- are confiscated under section 111(m) of the Customs Act, 1962 and the same are permitted for redemption on payment of redemption fine of Rs.3,00,000/- (Rupees three lakhs only).
- (ii) I also impose the personal penalty of Rs.50,000/- (Rupees fifty thousand only) on M/s. Aadya Minerals and Resources Enterprises, Vadodara, under section 112(a) of the Custom Act, 1962.
- (iii) The Bill of Entry should be assessed on enhanced value, after charging proper custom duty and anti-dumping duties and goods should be released immediately without delay.

  
(U.B. Rakhe)  
Additional Commissioner,  
Customs House, Kandla.

File No .S/20-08/Aadya/Gr.-II/17-18

To,

M/s. Aadya Minerals and Resources Enterprises,  
401, IsconAtria-2, Gotri,  
Vadodara.