



Office of the Commissioner of
Customs,
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सीमा शुल्क आयुक्त का कार्यालय,
नया सीमा शुल्क सदन,
नया कांडला – ३७० २१०.
दूरभाष – ०२८३६ २७१४६८-४६९,
फैक्स – ०२८३६ २७१४६७.



A	File No.	S/26-03/Import/Astral Freight Forwarders/Gr-II/2018-19
B	Order-in-Original No.	KDL/ADC/AK/01/2019-20
C	Passed by	Ajay Kumar Additional Commissioner, Customs House, Kandla.
D	Date of Order	10/05/2019
E	Date of Issue	10/05/2019
F	SCN NO. & Date	SCN & PH waived vide letter dated 14.02.2019 I/R Bill of Entry no. 8681705 dated 31.10.2018
G	Noticee / Party / Importer / Exporter	M/s Astral Freight Forwarders (P) Limited, Esplanada School Bldg., 3rd Floor, Room No.4, 160 D N Road Fort, Mumbai-400001.

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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), 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.”

- 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.
- 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.
- 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.
- 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.

Sub: Import of Mix of Plastic Regrind under Bill of Entry No. 8681705 dated 31.10.2018 by M/s Astral Freight Forwarders (P) Limited, Esplanada School Bldg., 3rd Floor, Room No.4, 160 D N Road Fort, Mumbai-400001, violating the provisions of Customs Act, 1962 and Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016.

BRIEF FACTS OF THE CASE

M/s Astral Freight Forwarders (P) Limited, Esplanada School Bldg., 3rd Floor, Room No.4, 160 D N Road Fort, Mumbai-400001(IEC No. 0399000046)(PAN No. AABCS1296G)(GSTIN 27AABCS1296G1ZB) imported 94.83 MT of goods described as "Plastic Regrind" from Philippines of Assessable value of Rs. 356267.76 i. e Rs. 3.76/Kg. The Bill of Lading No.DGKLA/003 dated 24.08.2018 issued by M/s Sitara Shipping Ltd., Mumbai wherein the description of the goods mentioned as "Palletized Plastic Regrind in 132 Jambo Bags and 54 Plastic Drums, HS Code 3902" . The commercial invoice DG000044 dated 24.08.2018 also declare the goods as Palletised Plastic Regrind 94.833 MT @ USD 50 / MT. Total invoice value is USD 4741/- (C&F). The invoice is raised by M/s Big Iron Trading & Development INC, 116 National Hi-way Bo. Barretto, Olongapo City, Philippines. The goods were examined on first check and the representative sample was sent to test as Custom House Laboratory, Kandla.

1.1 The CRCL, Kandla vide test report 4071 dated 27.12.2018 states;

"The sample as received is in the form of pigmented plastic cut pieces of asserted shapes and sizes along with extraneous matter. It is composed of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound. It is other than Regrind as per scrap specification circular-2018.

1.2 Further, the sample of the imported cargo was sent to CIPET, Ahmedabad to ascertain the goods are hazardous or not. CIPET, Ahmedabad vide their letter dated 03.04.2019 submitted that they do not have facility to ascertain the goods are hazardous or not and return the sample under the same. Though, it is clear that the cargo is composed of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound, which is a hazardous Chemical and restricted for import under Schedule VI under rule 12(6) 12(7) and 14(1) of the G.S.R No. 395 (E) dated 04.04.2016 Notification issued by Ministry of Environment , Forest & Climate Change.

1.3 The goods are described as Plastic Regrind classified under Custom Tariff item 39019090 and duty payable is Rs. 98,811/- as per importer. On chemical testing the goods have been found as mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound which is classified under Custom Tariff item 39159090 and thus the goods have been mis-declared for description and value and are liable for confiscation under section 111(m) of the Custom Act, 1962. So, the classification changes from Customs Tariff Heading 39019090 to 39159090. The declared value in Bill of Entry of the imported goods appears to be very low, as seen from NIDB data, the contemporaneous import prices are appears to be much higher, thus the declared value of the goods is liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Therefore for re-determination of value, it appears that Rule 4 of the Customs Valuation Rules, 2007 cannot be invoked as the declared goods which is plastic cut piece and other than scrap cannot be said identical in terms of Rule 4 ibid, therefore may be assessed in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. On verification of contemporaneous import

of the similar goods, the lowest price of the similar goods is Rs. 16.03/- , therefore, the total assessable value comes to Rs. 15,20,125/- .

1.4 The said imported goods are Restricted for import as Hazardous Chemicals. The mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound is covered under Schedule VI under rule 12(6) 12(7) and 14(1) of the G.S.R No. 395 (E) dated 04.04.2016 Notification issued by Ministry of Environment, Forest & Climate Change wherein Rules called Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 came into effect. The mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound will at Sr. No. B3010 of the Schedule VI of the Hazardous and Other Wastes Prohibited for Import. Thus, the subject import is Prohibited and cannot be allowed in terms of Rule 12(6) of the Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 and 94.83 MT of the mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound (mis-declared as Palletised Plastic Regrind) is liable for confiscation in terms of Section 111(d) of the Customs Act, 1962. Thus the importer is also liable for penalty under section 112 of the Customs Act, 1962.

1.5 The importer has also contravened the provisions of Section 46(4) of Customs Act, 1962 by the way of mis-declaration of description of goods. They have declared the mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound which is classified under Custom Tariff item 39159090 as Plastic Regrind classified under Custom Tariff item 39019090. Therefore, the importer is also liable for penalty under Section 114AA of the Customs Act, 1962.

PERSONAL HEARING

2. The importer M/s Astral Freight Forwarders (P) Limited, Esplanada School Bldg., 3rd Floor, Room No.4, 160 D N Road Fort, Mumbai-400001, vide their letter dated 14.02.2019 have requested for wavier of SCN and Personal Hearing and also requested to decide the matter on merits.

DISCUSSION & FINDINGS

3. I have carefully gone through the records of the case and submission made by the importer vide his letter dated 14.02.2019 and I find that they have waived the issuance of Show cause notice and the opportunity of Personal hearing, hence the principle of natural justice has been completed. I find that the goods have been examined on Ist check basis and samples were sent to ascertain the actual description of the goods, what was declared by the importers in terms of section 46 of the Customs Act, 1962 vide Test Memo no. 4071 dated 27.12.2018 to Customs House Laboratory, Kandla. CRCL Kandla vide his report dated 03.01.2019, stated that Chemical & Physical parameters reveal that what has been imported is not "Palletised Plastic Regrind" as declared in invoice, Bill of Entry etc. but it is in fact a mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound which is restricted for imports as well as Prohibited under Hazardous & Other Waste

Management & Transboundary Movement) Rules, 2016. The mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound is falls under the B 3010 of Schedule VI of the said Rules as Hazardous and Other Wastes Prohibited for Import. Thus, the 94.83 MT of mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound is not only will fully & intentionally mis-declared for description but also is prohibited for imports. In fact the purposeful mis-declaration of description is to import the restricted/prohibited goods into territory of India circumventing the policy provisions. I also find that as per Para 2.08 of the Foreign Trade Policy 2015-20 also read with rule 12 (6) of Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 the subject goods are Prohibited for imports. In view of the above, I hold that, 94.38 MT of the mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound imported vide Bill of entry No. 8681705 dated 31.10.2018 and having assessable value of Rs. 15,20,125/- are liable for confiscation under section 111(d) of the Customs Act, 1962.

3.1 I find that the description of the goods is declared as "Palletised Plastic Re grind" , whereas after testing the goods the goods are "a mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound" hence they have mis-declared the goods and contravened the provisions of Section 46 of the Customs Act, 1962. Further, the value declared by the importers is not in conformity with the Section 46 ibid and is very low, as seen from NIDB data, the contemporaneous import prices are much higher than the import prices of the goods, thus the declared value of the goods is rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. I find that Rule 4 of the Customs Valuation Rules, 2007 cannot be invoked as the declared goods which is plastic cut piece and other than scrap cannot be said identical in terms of Rule 4 ibid, therefore goods to be assessed in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in terms of contemporaneous import of the similar goods, the lowest price of the similar goods is Rs. 16.03/- , therefore, the total assessable value comes to Rs. 15,20,125/- . As the value and description of the goods have been mis-declared, the goods are also liable for confiscation under Section 111(m) of the Customs Act, 1962.

3.2 I also find that by doing so importer M/s Astral Freight Forwarders (P) Limited, Esplanada School Bldg., 3rd Floor, Room No.4, 160 D N Road Fort, Mumbai-400001, are also liable for penal action under section 112 of the Customs Act, 1962.

3.3 I also find that M/s Astral Freight Forwarders (P) Limited, Mumbai have violated the provisions of Section 46 of Customs Act, 1962 by the way of mis-declaration of description of goods and value knowingly and intentionally in Bill of Entry in the transaction of their business. Thus they are also liable for penalty under section 114AA of the Customs Act, 1962.

4. In view of the above, I pass the following order;

ORDER

- a. I order that the mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound imported under Bill of Entry No. 8681705 dated 31.10.2018 (mis-declared as Palletised Plastic Re grind) be classified under Custom Tariff Item 39159090 of the Customs Tariff Act, 1985(as amended time to time).
 - b. I reject the declared value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and re-determined the value @ Rs. 16.03/Kg under Rule 5 ibid.
 - c. I order for confiscation of the 94.83 MT of mixture of Polyvinyl chloride, Polystyrene and Ethylene based Polymeric compound (mis-declared Palletised Plastic Re grind) under section 111(m) and 111(d) of the Customs Tariff Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.2,00,000.00 (Rupees Two Lakh only) under Section 125 of the Customs Act, 1962 for re-export purpose only.
 - d. I also impose a penalty of Rs. 1,00,000.00 (Rupees One Lakh only) on the importer M/s. Astral Freight Forwarders (P) Limited, Mumbai under Section 112(a) of Customs Act, 1962.
 - e. I also impose a penalty of Rs. 50,000.00 (Rupees Fifty Thousand only) on the importer M/s. Astral Freight Forwarders (P) Limited, Mumbai under Section 114AA of Customs Act, 1962.
 - f. I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.
5. This order is issued without prejudice to the 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.

[Signature]
(AJAY KUMAR)

**Additional Commissioner,
Custom House, Kandla**

Dated:10.05.2019

F. No. S/26-03/Import/Astral Freight Forwarders/Gr-II/2018-19

To

**M/s Astral Freight Forwarders (P) Limited,
Esplanada School Bldg., 3rd Floor, Room No.4,
160 D N Road Fort, Mumbai-400001**

Copy to:

- 1) The Principal Commissioner, Custom House, Kandla.
- 2) Deputy Commissioner (Gr-II), Custom House, Kandla.
- 3) The Assistant / Deputy Commissioner (RRA), Custom House, Kandla.
- 4) The Assistant / Deputy Commissioner (TRC), Custom House, Kandla.
- 5) Guard File.



[Handwritten Signature]
Supt Gr II
KM 15.05