



सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

A	फाइल संख्या/ File No.	F. No. S/15-07/SIIB/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/09/2019-20
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	01.08.2019
E	जारी करने की दिनांक/Date of issue	01.08.2019
F	एस.सी.एन. सं. एवं दिनांक /SCN No. & Date	SCN & PH waived vide letter dated 06.05.2019.
G	नोटीसी पार्टी /Noticee/Party	M/s E Process House, Shed No. 136/F-1 Sr. No. 2/P & 4/P 4 th phase, GIDC, Vapi, Gujarat.

- यह अपील आदेश संबन्धित को नि शुल्क 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 (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
वी मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़
अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
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 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- 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 2/- 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. 2/- (Rupees Two 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.
.6अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील) और सीमा शुल्क अधिनियम 1982, 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.
- 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 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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 E Process House, Shed No. 136/F-1 Sr. No. 2/P & 4/P 4th phase, GIDC, Vapi, Gujarat (hereinafter called as 'the importer' for the sake of brevity)(IEC No. AACFE9618A), is a partnership firm and engaged in Recycling & Refurbishing of E-waste comprising of CPU, Monitor, Keyboard, Mouse, UPS, Power Chord etc. They are holding GST registration No.24AACFE9618A1ZU.

1.1 The importer filed Bill of Entry for home consumption in respect of the imported goods purchased from M/s Orbit World Trade Link, on high seas sale basis. Detail of the same is shown in the below TABLE-A:-

TABLE-A

Sr. No.	BE No./date / Container No.	Description of Goods	Quantity (in PCS)	Unit price declared	Unit price assessed	Assessable value (Rs.)
01	9855145/ 30.01.2019/ GATU0343837	Hard Disk Drive and Mini Tower	1250	\$10	\$12	11,15,540.00
02	9853503/ 30.01.2019/ CZZU3250200	Computer case with power supply & Motherboard (without RAM, CPU & HDD)	1250	\$10	\$12	11,03,130.00
03	2042167/ 13.02.2019/ ECMU1344380		1000	\$10	\$10	7,49,367.00
Total						29,68,037.00

1.2 It is pertinent to mention here that the unit price in respect of whole goods was declared \$10 but the same has been enhanced to \$12 for assessment purpose in respect of goods covered under BE shown at Sr. No. 1 and 2 in the above table-A. These prices have been enhanced on the basis of Inspection Report dated 31.01.2019 given by Shri Anwar Y Kukad, Chartered Mechanical Engineer after consulting Shri Nirav Shah who has been working in Paras Computer, Shop No.3, Sector 1A, Gandhidham since 2006-07. These facts have also been accepted by Shri Nirav Shah in his statement dated 10.05.2019 recorded under Section 108 of Customs Act, 1962.

1.3 Further, acting on an Intelligence communicated vide letter F.No.DRI/AZU-GI/01/INT-01/2019 dated 04.02.2019 by DRI, AZU, Ahmedabad that consignments of "second hand computers and / or second hand parts / spares of laptops and computers" have been imported and the same also appears to have been imported in violation of IPR Rules in terms of Para 4(ii) of CBIC Circular No. 13/2012-Customs dated 08.05.2012 as the same is "material altered or impaired" by way of being disassembled parts with a request of 100% Examination of the subject consignments, the cargo was examined by the Officers of SIIB, Kandla Customs vide Panchnama dated 06.02.2019, 07.02.2019 and 20.02.2019 for BE No. 9855145 dated 30.01.2019, BE No. 9853503 dated 30.01.2019 and BE No. 2042167 dated 13.02.2019 respectively. The said Panchnama were drawn at the premises of M/s A. V. Joshi CFS, Survey No-316/5, NH-8A, Near Mahindra & Mahindra Showroom, Mithirohar, Gandhidham and during the examination, variations have been noticed in cabinets in terms of Brand, fitted/unfitted with RAM, HDD, DVD Drive and CPU. Details of the same are given as under:-

1.4. The details of examination done container-wise are as under:-

1.4.1 Panchnama dated 06.02.2019 for Bill of Entry No. 9855145 dated 30.01.2019 for Container Number GATU0343837:-

Sr. No.	Brands	No. of Units with DVD Drives	No. of Units without DVD Drives	Remarks
1	HP	610	22	6 Units found with CPU, 3 with hard Disk, 1 with RAM
2	DELL	530	86	2 Units found with hard disk, 1 with CPU, HDD and RAM
3	LENOVO	1	0	-

During examination it is found that the aforesaid goods were manufactured during the year 2011-2013 as the date available outside or inside the computer case and dust and scratches were also found inside and outside the computer cabinets. During examination total 1249 units found against declared 1250 units.

1.4.2 Panchnama dated 07.02.2019 for Bill of Entry no. 9853503 dated 30.01.2019 for Container Number CZZU3250200:-

Sr. No.	Brands	No. of Units with DVD Drives	No. of Units without DVD Drive	Remarks
1	HP	414	2	Out of 416, 2 unit found with RAM and 1 with Processor + RAM
2	LENOVO	832	2	Out of 834, 1 unit found with processor, 2 with RAM, 3 with HDD and 1 with processor-HDD+RAM

During examination it is found that the aforesaid goods were manufactured during the year 2011-2013 as the date available outside or inside the computer case and dust and scratches were also found inside and outside the computer cabinets. During examination total 1250 units found against declared 1250 units.

1.4.3 Panchnama dated 20.02.2019 for Bill of Entry no. 2042167 dated 13.02.2019 for Container Number ECMU1344380:-

Sr. No.	Brands	No. of Units with DVD Drives	No. of Units without DVD Drive	Remarks
1	HP	385	1	Out of 386 units, 3 found fitted with CPU (i3 / AMD), 2 with RAM, 5 LAN Card
2	DELL	606	8	Out of 614, 36 found with CPU (i3 / i5), 5 LAN Card , 3 AMD Graphic Card

During examination it is found that the aforesaid goods were manufactured during the year 2011-2013 as the date available outside or inside the computer case and dust and scratches were also found inside and outside the computer cabinets. During examination total 1250 units found against declared 1250 units.

1.5. During the course of examination of similar cargo, this office had contacted Representatives from various Brands viz. HP, LENOVO and DELL for the inspection and to submit their report. In response, Representatives from M/s HP India Sales Pvt. Ltd. and M/s. Lenova India Pvt. Ltd., inspected the above said cargos i.e. "Mini Tower desktop computer case with Motherboard (without RAM, Processor and HDD)" and gave their report dated 27.02.2019 & 06.03.2019 respectively. Brief of the same is as under:

1.5.1 Report Given by HP India Sales Pvt. Ltd.:-

- They have submitted that imported parts belong to used HP branded products that were manufactured for use in countries outside India and it is their apprehension that the other parts of these used HP manufactured products will be separately imported into India at the later date.
- They have submitted that these imported goods are not finished computers classifiable under CTH 847150 and appears to be imported as raw materials and/or completely knocked down or semi knock down conditions.
- They have submitted that these imported goods appears to be used or second hand goods and requires import license as per Notification no. 35 (RE-2012)/2009-2014 dated 28.02.2013, para 2.17 of Foreign Trade Policy issued by Ministry of Commerce, DGFT.
- Also, the importer is required to obtain NOC from MOEF, as per Hazardous Wastes (management, handling and Trans-boundary Movement) Rules 2008.
- They have also stated that since these used branded products were manufactured for use in countries outside India, these products and their parts would not meet the Indian regulation requirements mandated by the BIS.

1.5.2 Report Given by Lenovo India Pvt. Ltd.:-

- The items are not new i.e. the items are used.
- The items seems to be Lenovo brand which were sold in the US market in the year 2012-13.
- The importer M/s E Process House is not the business partner and Lenovo has not authorized them for the import.

1.5.3 Report Givenby DELL India Pvt. Ltd.:-

The DELL has not turned up for inspection and even did not reply any e-mail conversations, even after repeated mails from this office.

RECORDING OF STATEMENTS

1.6 During the course of investigation in the instant case, Statements of various persons were recorded under Section 108 of the Customs Act, 1962. Details of the same are under:-

1.6.1 Statement dated 18.03.2019 of Shri Anwar Y Kukad, Chartered Mechanical Engineer recorded in compliance of Summons dated 18.03.2019 under Section 108 of Customs Act, 1962, wherein interalia he stated that:-

- That he had issued and perused report reference No. AYK: VAL: 0714: 2018 dated 31.01.2018 for the consignment imported by M/s E Process House, GIDC, Vapi covered under Commercial Invoice No. 556 dated 13.01.2019 and 561 dated 18.01.2019, described as "Mini

Tower Computer Case with Power Supply & Motherboard (Without RAM, CPU & HDD)", de-stuffed from Container No(s). CZZU3250200 & GATU0343837.

- That the cargo inspected in A V Joshi CFS which was imported by M/s E Process House, GIDC, Vapi covered under Commercial Invoice No. 556 dated 13.01.2019 and 561 dated 18.01.2019 and destuffed from Container No(s). CZZU3250200 & GATU0343837 was described as "Mini Tower Computer Case with Power Supply & Mother Board (Without RAM, CPU & HDD)".
- That I was contacted by Sh. Ashish Umrana, authorized person of M/s E Process House, to inspect the cargo for valuation of the cargo.
- That the price given by him is \$12/unit (in prevailing market in India) and for the same he had contacted Shri Nirav Shah of Paras Computer, Sector 1-A, Near Kutchh Uday, Gandhidham.
- That since the models were old, obsolete technology and were manufactured during 2011-13, therefore the value of \$12/unit was arrived.
- That as per his inspection, the cargo appeared to be manufactured during 2011-13 and as per the dust and scratches present at the cabinets the cargo seems to be old.
- That regarding whether the cargo was used or otherwise, from the appearance it is hard to comment whether the cargo was used or unused but there are certain things, from which we can say that the possibility of cargo being used cannot be ruled out, which are as under:
 - All the computer cabinets are installed with motherboard, power supply and DVD drive of same brand.
 - All the motherboards are attached with processor fan, which is not an integral part of motherboard; also the fan screws were found loose.
 - Most of the units have labels like i7/i5/i3 etc. which describes the processor installed, but the processors were not found installed.
 - Most of the units have labels of windows product key which suggest the type of windows provided along with the computer units.
 - Also all the processor fans have impressions of pasting found on the processors, which implies the processors might have been removed.
 - That he had perused the panchnama dated 06.02.2019 and 07.02.2019 and during his inspection three brands viz. DELL, LENOVO, HP were found, however, the Brand HP had not been mentioned due to negligence during typing the said report.
 - That after perusal of the inspection report dated 27.02.2019 and 06.03.2019 given by HP India Sales Pvt. Ltd. and Lenovo India Pvt. Ltd., he stated that HP India Sales Pvt. Ltd. and Lenovo India Pvt. Ltd., have declared the cargo as used/second hand and as per his views, they have the technology and resources to declare the product as used / second hand so the report seems right to him.

1.6.2 Statement dated 26.03.2019 of Sh. Bharat Haribhai Umrana, Authorised person of M/s E Process House and proprietor of M/s Orbit World Trade Link recorded in compliance of Summons dated 26.03.2019 under Section 108 of Customs Act, 1962. Content of the statement is as under:-

- M/s E Process House, GIDC, Vapi is a partnership firm which recycles & refurbish E waste comprising of CPU, Monitor, Keyboard, Mouse etc. the said firm is registered under GST having registration No. 24AACFE9618A1ZU.
- As regards contract/purchase order, Performa Invoice & mode of payment term of import of "Mini Tower Computer Case with Power Supply & Motherboard (Without RAM, CPU & HDD)" imported vide Bills of entry No(s). 9853503, 9855145 both dated 30.01.2019 and 2042167 dated 13.02.2019, M/s E Process House have purchased the goods from M/s Orbit World Trade Link, on high seas sale basis and being proprietor of M/s Orbit World Trade Link,

he stated that they do not have any written contract from the overseas supplier, they did order through one indenting agent M/s Bright View General Trading, Ajman, UAE.

- As regards mode and terms of payment, M/s E process House has paid part payments, cumulatively, 6.5 lac against all the three containers imported vide Bills of entry No(s). 9853503, 9855145 both dated 30.01.2019 and 2042167 dated 13.02.2019. M/s Orbit World Trade Link has not paid anything to the overseas indenting agent but their agent may have given some security to the supplier.
- As regards purpose of import, as M/s E Process House is a refurbishing/reconditioning unit, they intended to refurbish the goods, if found old and direct sale if found new. That regarding the reason of high seas purchase from M/s Orbit World Trade Link, this kind of cargo is not always readily available in the market therefore sometimes M/s E Process House Directly purchase from overseas suppliers or sometimes purchase from M/s Orbit World Trade Link.
- As regards the nature and condition of the goods imported vide Bills of entry No(s). 9853503, 9855145 both dated 30.01.2019 and 2042167 dated 13.02.2019, they had ordered for the stocklot of "Mini Tower Computer Case with Power Supply & Motherboard (Without RAM, CPU & HDD)". That as per the facts (like manufacturing date etc.) reveals during examination under panchnama proceedings, the cargo appears old and stock lot of various brands.
- They had ordered for the stocklot of "Mini Tower Computer Case with Power Supply & Motherboard (Without RAM, CPU & HDD)" and as per the condition and manufacturing dates mentioned on the units the cargo appears old.
- After perusal of the inspection report dated 27.02.2019 and 06.03.2019 given by HP India Sales Pvt. Ltd. and Lenovo India Pvt. Ltd. respectively, he is agreed with the report given by HP India Sales Pvt. Ltd.
- As regards reason for non declaration of cargo being old and used, they had ordered for the stock lot of "Mini Tower Computer Case with Power Supply & Motherboard (Without RAM, CPU & HDD)" and they had not seen the cargo before shipment, so they did not know that the actual condition of the cargo.
- As regards non-mentioning of the cargo as stocklot, in the import documents, they had declared the cargo as per the Invoices and packing lists provided by the shipper and as they were not certain of the condition of the cargo, they had opted for the first check for proper classification and examination of the goods.
- M/s E Process House is registered under Gujarat Pollution Control Board and have consent order No. WH-78936 dated 16.05.2016 for the manufacturing of Recycling & Refurbishing of E-Waste Comprising of CPU, Monitor, Keyboard, Mouse, UPS, Power Chord etc. and the said permission is valid up to 31.12.2020.
- That regarding the details of the partners in M/s E Process House, M/s E Process House have two partners namely Sh. Ashfaq Khan and Sh. Israr Ahmad Khan having AADHAR Card No(s). 653705645650 and 585129817000 respectively.
- As regards appearance on behalf of M/s E Process House, he stated they have already given power of Attorney to me for the purpose of import and any representation before any central/state government body and also they have purchased the cargo from M/s Orbit World Trade Link therefore they considered himself a better person to represent themselves in this case.
- That regarding the registration of M/s E Process House under BIS, they do not have any registration under BIS.
- He is agreed with the reports of HP and Lenovo and ready to re-export the cargo in case of non-clearance of such goods, but requested to allow the clearance of the said cargo since they have permission to import even old and used (E Waste) cargo.

From the Statement, it can be inferred that he had failed to submit any documentary evidence to substantiate the claim the order of stock lot cargo; that they do not have any contract of

purchase from overseas buyer, which is very unlikely event. He failed to provide the conversation and payment details with/of indenting agent and any permission of MOEF, required to import such Old and Used cargo.

IMPORT RESTRICTIONS AND PROVISIONS

1.7 Import Policy for Second Hand Goods:

"2.31 Second Hand Goods

S.No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I	Second Hand Capital Goods		
(a)	i. Personal Computers/laptops... ii. Photocopier machines..... iii. Air Conditioners iv. Diesel generating sets.	Restricted	Importable against Authorisation
(b)	Refurbished.....	Free	Subject to production.....
©	All other second hand capital goods.....	Free	
II	Second Hand Goods other than Capital Goods.	Restricted	Importable against Authorisation.

1.7.1 Para 4(ii) of Circular No. 13/2012-Customs dated 08.05.2012 on Enforcement of Intellectual Property Rights on imported goods - Clarification on the issue of parallel imports, stipulates that "Section 30(3)(b) of the Trade Marks Act, 1999 provides that where the goods bearing a registered Trade Mark are lawfully acquired, further sale or other dealing in such goods by purchaser or by a person claiming to represent him is not considered an infringement by reason only of the goods having been put on the market under the registered Trade Mark by the proprietor or with his consent. However, such goods should not have been materially altered or impaired after they were put in the market".

SEIZURE OF THE CARGO

2. During the examination of the cargo under Panchnama proceedings and as per the inspection reports submitted by authorised representative of HP Brand, it has been found that the goods imported are "Old and Used" which falls under the category of restricted items as per para 2.31(II) of Foreign Trade Policy 2015-2020, therefore said cargo was placed under seizure vide Seizure-Memo dated 14.03.2019 and the seized cargo was handed over to M/s A. V. Joshi CFS, Gandhidham vide Supratnama dated 14.03.2019.

APPLICABILITY OF IPR AND BIS

3. It appears that goods have been materially altered, even though the violation of IPR does not appear to be sustainable as the brand holders viz. HP, LENOVO and DELL did not object the import of goods on the point of violation of IPR. Moreover, as per the examination and inspection reports the aforesaid imported goods is found to be old & used and the importer is ready for re-export in case its clearance is not allowed. Hence, the applicability of IPR and BIS was not examined.

OBSERVATION AND CONCLUSION OF INVESTIGATION

4. During the Examination of the cargo and further Investigation in the matter, it has been found that the goods were packed in brown corrugated boxes and do not have any mark/sticker/print of any particular company/ brand/ trademark. However, inside the boxes there were the cargos of different brands found present inside the Boxes. Computer cabinets were equipped with mother board, DVD/CD Player unit, Power Unit, Processor Cooling Unit etc. with the name of brand/Trademark of HP, Lenovo, Dell etc.

4.1 During scrutiny and examination of the documents viz. Bill of lading, Bills of Entry, invoices, packing list, it is found that the importer has declared the description of goods as Hard Disk Drive and Mini Tower Computer case with power supply & Motherboard (without RAM, CPU & HDD) in their Bill of lading, Bills of Entry, invoices, packing list. Whereas, on physical verification of goods and examination report of M/s HP India Sales Pvt. Ltd. dated 27.02.2019 & M/s. Lenovo India Pvt. Ltd. dated 06.03.2019 it is found that the goods imported were old and used items. Further, Sh. Bharat Haribhai Umrana, Authorised person of the importer in his statement recorded on 26.03.2019 under Section 108 of the Customs Act, 1962 confirms that the cargo is old & used by agreeing to the report of HP & Lenovo regarding the cargo.

4.2 Further, the importer had filed Bills of Entry for home consumption and declared the description of goods as Hard Disk Drive and Mini Tower Computer case with power supply & Motherboard (without RAM, CPU & HDD) in their Bill of lading, Bills of Entry, invoices, packing list and also at the same time, they have failed to mention the correct description of the cargo in all the said Bills of Entry and instead of mentioning that the cargo is "Old and Used", they had remained silent on the same.

4.3 Thus, it appears that they have willfully mis-declared the actual and correct description of goods imported in the documents viz., Bill of lading, Bills of Entry, invoices, packing list as required under Section 46 of the Customs Act, 1962 and thereby contravened the provisions of Section 46 of the Customs Act, 1962 and rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

REQUEST FOR WAIVER OF SHOW CAUSE NOTICE & PERSONAL HEARING

5. The importer vide their letter dated 06.05.2019 has requested for waiver of SCN & PH and requested to decide the case as soon as possible on merit. But, they reserved their full right.

5.1 Sh. Bharat Haribhai Umrana, Authorised person of the importer and proprietor of M/s Orbit World Trade Link in his Statement dated 26.03.2019 of recorded under Section 108 of Customs Act, 1962 has agreed with the reports of HP and Lenovo and ready to re-export the cargo in case of non-clearance of such goods.

DISCUSSION AND FINDINGS

6. I have carefully gone through the case records, facts of the case and the submissions made by the importer and I find that they have waived the issuance of Show Cause Notice and opportunity of personal hearing. Thus, the principle of natural justice has been completed.

6.1 Now, I proceed to decide the case on the basis of the documents available on record. I find that importer have filed three B/Es for home consumption AS MENTIONED IN TABLE-A, showing the description of goods/ declared goods as Hard Disk Drive 160 GB (Mini Tower Computer Case with Power Supply & Mother board (without RAM, CPU & HDD). On physical

verification of goods by the officers during panchnama proceeding, as per examination report dated 27.02.2019 of M/s. HP India Sales Pvt. Ltd. and report dated 06.03.2019 of M/s Lenovo India Pvt. Ltd. as aforesaid imported goods is of HP and Lenovo brand, were found to be old and used. Further, Bharat Haribhai Umrania, Authorised Person of the importer and Proprietor of M/s Orbit World Trade Link, in his statement recorded on 26.03.2019 under Section 108 of the Customs Act, 1962 has also confirmed that the aforesaid imported goods were old and used.

6.2 As per provision of Section 46(4) of Customs Act, 1962, the importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall in support of such declaration, produce the proper officer the invoice, if any or any other documents relating to the imported goods. Further, as per Section 46(4A) of the Customs Act, 1962, the importer, who presents a Bill of Entry shall ensure the accuracy and completeness of the information given, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any related to the goods under this Act or any other law for the time being in force. However, in the instant case, the importer failed to provide the accurate and complete information about the goods and is silent about the condition of the goods as "Old and Used". Therefore, I find that the importers have willfully mis-declared the actual and correct description of the goods imported in the documents viz., Bill of lading, Bills of Entry, invoices, packing list as required under Section 46 of the Customs Act, 1962 and thereby contravened the provisions of Section 46 of the Customs Act, 1962 and therefore, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. The importers are rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

6.3 I find that the above said imported goods are old and used parts of HP and DELL brand computer. Therefore, the authorized representatives of these brands were informed for their inspection. In response, only HP India Sales Pvt. Ltd. and M/s Lenovo India Pvt. Ltd inspected the goods and submitted their inspection report vide their letter dated 27.02.2019 and 06.03.2019, respectively. But, no notice has been given by the brand holders for suspension of clearance of these goods as provided under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Moreover, as per the examination and inspection reports the aforesaid imported goods is found to be old & used and the importer is ready for re-export in case its clearance is not allowed. Hence, the provisions of IPR and BIS are not applicable.

6.3 Further, I find that these goods are found to be used or Second Hand Goods, hence, import of the same is restricted as per Para 2.17 of the Foreign Trade Policy and require import Licence as per Not. No. 35(RE-2012)/2009-2014 dated 28.02.2013. Therefore, the above said imported goods having total assessable value of Rs.29,68,037/- are liable for confiscation under Section 111(d) of the Customs Act, 1962.

7. In view of above, I pass the following order:

ORDER

a. I order for confiscation of the goods covered under four Bills of Entry, mentioned in TABLE-A of old and used parts of HP, LENOVO and DELL brand computer valued at Rs.29,68,037/- under Section 111(d) and 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 6,00,000.00 (Rupees Six Lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.

b. I also impose a penalty of Rs. 2,00,000.00 (Rupees Two Lakh only) on M/s E Process House, Shed No. 136/F-1 Sr. No. 2/P & 4/P 4th phase, GIDC, Vapi, Gujarat under Section 112(a) of the Customs Act, 1962.

c. I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.



(AJAY KUMAR)

Additional Commissioner,
Custom House, Kandla

Dated: 01.08.2019

F. No. S/15-07/SIIB/2018-19

To,
M/s E Process House,
Shed No. 136/F-1 Sr. No. 2/P & 4/P 4th phase,
GIDC, Vapi, Gujarat.

Copy to:

1. The Pr.Commissioner of Customs, Kandla
2. The Deputy Commissioner (RRA/Recovery), Custom House Kandla.
3. The Deputy Commissioner (Gr-V), Custom House Kandla.
4. Guard file.