



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/15-03/PYN/SIIB/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/11/2019-20
C	पारितकर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	04.09.2019
E	जारी करने की दिनांक/Date of issue	04.09.2019
F	एस.सी.एन. सं. एवं दिनांक /SCN No. & Date	SCN & PH waived vide letter dated 05.08.2019.
G	नोटीसी पार्टी /Noticee/Party	M/s PYN Systems India Pvt Ltd., A-3/36, Dal Mill Road, Uttam Nagar, New Delhi-110059

1. यह अपील आदेश संबन्धित को नि शुल्क 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
वीं 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.”

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 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.
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 नियम (अपील), और सीमा शुल्क अधिनियम 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का फलन 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 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. PYN Systems,(IEC No. 0507090187)[GSTIN No. 07AEEP9112M1ZB(07)](PAN No. AEEP9112M) A-3/36, Dal Mill Road, Uttam Nagar, New Dehli- 110059, a proprietorship firm is engaged in trading activities. On being authorized by M/s. PYN Systems, M/s Flamingo Logistics, KASEZ filed Warehouse Bills of Entry as per the details below:-

Sr. No.	Warehouse Bill of Entry Number/ Date / Container No.	Item Description	Quantity	Assessable value (Rs.)
1	1018840/26.12.2018/ SKHU8726879	Mini Tower desktop computer case with Pentium and core 2 duo CPU and Motherboard (without HDD and RAM)	1383	15,43,251.00
		Mini Tower desktop computer case with Motherboard (without CPU, HDD and RAM)	646	
2	1018842/26.12.2018/ SEGU1847513	160 GB Hard Disk Drive	10800	69,91,201.00
		160 GB IDE Hard Disk Drive	1200	
3	1000253/07.01.2019/B EAU2595712	Mini Tower desktop computer case with Motherboard (without CPU, HDD and RAM)	600	43,77,783.76
		Desktop Motherboard 945	4500	
Total				1,29,12,235.76

1.1 Further, acting on an Intelligence communicated vide letter F.No. DRI/AZU-GI/1/INT-01/2019 dated 04.01.2019 & 10.01.2019 from DRI, AZU, Ahmadabad 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 07.01.2019 & 08.01.2019 for Warehouse Bill of Entry No. 1018840 dated 26.12.2018, Panchnama dated 09.01.2019 for Warehouse Bill of Entry No. 1018842 dated 26.12.2018 and Panchnama dated 31.01.2019 for Warehouse Bill of Entry No. 1000253 dated 07.01.2019 with the key details as below:-

TABLE-A

Sr. No.	Warehouse Bill of Entry Number/ Date / Container No.	Item Description	Quantity	Panchnama Date
1	1018840/26.12.2018/ SKHU8726879	Mini Tower desktop computer case with Pentium and core 2 duo CPU and Motherboard (without HDD and RAM)	1383	07.01.2019 & 08.01.2019
		Mini Tower desktop computer case with Motherboard (without CPU, HDD and RAM)	646	
2	1018842/26.12.2018/SE GU1847513	160 GB Hard Disk Drive	10800	09.01.2019
		160 GB IDE Hard Disk Drive	1200	
3	1000253/07.01.2019/B	Mini Tower desktop computer	600	31.01.2019

EAU2595712	case with Motherboard (without CPU, HDD and RAM)		
	Desktop Motherboard 945	4500	

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

1.2.1 Panchnama dated 07.01.2019 and 08.01.2019 for Ware-House Bill of Entry No. 1018840 dated 26.12.2018 for Container Number SKHU8726879:-

The said Panchnama were drawn at the warehouse premises of M/s Flamingo logistics, Unit No. 306, 2nd floor, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham and during the examination, it was found that the motherboard is located inside the cabinets and DVD drive is installed with power supply Unit. Further, it was found that in some units processor is fixed below the processor fan and in some processor is not fixed and there is no Hard Disk inserted in the cabinet. Also it is observed that dust, web and scratched found inside/outside the CPU cabinets and it appears that the devices are old and also seems to be used one. Some cabinets are found affixed with white slips mentioning "WRITE-OFF". During examination, variations have been noticed in cabinets in terms of Size, Brand, fitted/unfitted with RAM, HDD, Floppy Drive, DVD Drive and CPU. It has also been found that the said computers are of DELL, Lenovo and HP Brands.

1.2.2 Panchnama dated 09.01.2019 for Warehouse Bill of Entry No. 1018842 dated 26.12.2018 for Container Number SEGU1847513:-

The said Panchnama were drawn at the warehouse premises of M/s Flamingo logistics, Unit No. 306, 2nd floor, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham and during the examination, it was found that the each carton, total 40 Hard Disks in two layers of 20 each have been found stuffed inside. Each hard disk found packed inside a blue transparent poly pack, which has been sealed with a yellow colour slip. Information of each hard disk found easily legible from outside the poly pack. During examination, variations have been noticed in Hard Disks in terms of Brand and the same is as under below table:

BRAND	Capacity (In GB)	Number of units	Remarks
Western Digital	160	1523	Manufactured during 2010-2011
Seagate	160	9448	Date code mentioned but manufacturing date could not be ascertained
Excel Store	160	91	Manufactured during 2007-09
Hitachi	160	928	Manufactured during 2005-11
	164	2	
	82.3	1	
Samsung	160	5	Date code mentioned but manufacturing date could not be ascertained
Max Tor	160	1	
Magnetic Data	160	1	

1.2.3 Panchnama dated 31.01.2019 for Warehouse Bill of Entry No. 1000253 dated 07.01.2019 for Container Number BEAU2595712:-

The said Panchnama were drawn at the warehouse premises of M/s Flamingo logistics, Unit No. 306, 2nd floor, Ganga SDF Complex, Phase-II, Kandla Special Economic Zone, Gandhidham and during the examination, it was found that various brands of the motherboard found viz. Foxconn, MSI, ASUS, Biostar, ESC, P5KPLAM, ASROCK, LG, Gigabyte and unbranded with type G31, 41, 43, H55, 61, 67, 81 etc. Further, in total 4730 motherboard found against declared 4500. And details of the examination of Mini Tower Computer are as under:-

S.No.	Brand	Total	Remarks
1	HP	580	All the units were found with motherboard and DVD drive (without HDD, RAM, CPU)
2	DELL	19	
3	LENOVO	1	

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

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

- They have submitted that imported parts belongs 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.

1.3.2 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. PYN Systems is not the business partner and Lenovo has not authorized them for the import.

1.3.3 Report Givenby DELL India Pvt. Ltd.

It is pertinent to mention here that DELL has not turned up for inspection and even did not reply any e-mail conversations, even after repeated mails from this office.

1.4 Recording of Statements

Shri Hemant Kumar Kohli, Proprietor of M/s. PYN Systems India Pvt. Ltd., A-3/36, Dal Mill Road, Uttam Nagar, New Dehli- 110059 in his statement recorded on 08.03.2019 under Section 108 of the Customs Act, 1962 wherein he stated that :-

- He stated that there was no written contract for the import, made by M/s PYN Systems, with the supplier and submitted performa invoice of two consignments.
- The purpose of import is intended to re-export the same after checking the working condition of the imported cargo.
- The condition of the said imported goods as per the declaration of the shipper the cargo was old and unused but according to him cargo appeared to be used.

Import Restrictions and provisions

1.5 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.

1.6 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. As the goods imported appears to be "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 15.03.2019 and the seized cargo was handed over to M/s Flamingo Logistics, KASEZ, Gandhidham vide Supratnama dated 15.03.2019.

APPLICABILITY OF IPR

3. It appears that goods have been materially altered, even though the violation of IPR does not appears to be sustainable because the brands viz. HP & DELL did not object the import of goods on the point of violation of IPR and also they did not registered themselves under IPR Rules.

APPLICABILITY OF BIS

4. As the subject cargo which was found to be old & used and intended for re-export, the applicability of BIS was not examined.

OBSERVATION AND CONCLUSION

5. 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. Further, various brands of the motherboard found viz. Foxconn, MSI, ASUS, Biostar, ESC, P5KPLAM, ASROCK, LG, Gigabyte and unbranded with type G31, 41, 43, H55, 61, 67, 81 etc.

5.1 During scrutiny and examination of the documents viz. Bill of lading, Warehouse Bills of Entry, invoices, packing list, it is found that they have declared the description of goods as Mini Tower desktop computer case with Pentium and core 2 duo CPU and Motherboard (without HDD and RAM), Mini Tower desktop computer case with Motherboard (without CPU, HDD and RAM), 160 GB Hard Disk Drive, 160 GB IDE Hard Disk Drive & Desktop Motherboard 945 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 and M/s. Lenovo India Pvt Ltd dated 06.03.2019 and it is found that the goods imported were old and used items. Further, Shri Hemant Kumar Kohli, Proprietor of M/s. PYN Systems India Pvt. Ltd, Delhi in his statement recorded on 08.03.2019 under Section 108 of the Customs Act, 1962 has also confirmed that the goods imported were old and used.

5.2 Further, though the SEZ Entity M/s Flamingo Logistics, KASEZ, Gandhidham had filed the Ware-House Bills of Entry for the said cargo on behalf of their client M/s. PYN Systems India Pvt. Ltd, Delhi and declared the description of goods as Mini Tower desktop computer case with Pentium and core 2 duo CPU and Motherboard (without HDD and RAM), Mini Tower desktop computer case with Motherboard (without CPU, HDD and RAM), 160 GB Hard Disk Drive, 160 GB IDE Hard Disk Drive & Desktop Motherboard 945 in their Bill of lading, Warehouse 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 Warehouse Bills of Entry and instead of mentioning that the cargo is "Old and Used", they had remained silent on the same

5.3 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.

5.4 Further, during Panchnama dated 31.01.2019 for Warehouse Bill of Entry No.1000253 dated 07.01.2019 for container number BEAU2595712, it is observed that in total 4730 'Desktop Motherboard 945' found against declared 4500 and hence the excess quantity of 230 Nos. of 'Desktop Motherboard 945' are liable to be confiscated under Section 111(f) of Customs Act, 1962. Also the Chartered Engineer (Mechanical), Govt. Approved Valuer, vide his Inspection and Valuation Report dated 27.03.2019 has reported that based on the status of the Cargo, Aging & Technology involved, the invoice value of the Cargo are fair & reasonable and based on the Warehouse Bill of Entry No. 1000253 dated 07.01.2019, the rate of one 'Desktop Motherboard 945' comes to Rs.875.56. Thus, the assessable value of excess goods i.e. 230 'Desktop Motherboard 945' comes to Rs. 2,01,378/- and the same are liable to be confiscated under Section 111(f) of Customs Act, 1962.

**REQUEST FOR WAIVER OF SHOW CAUSE NOTICE & PERSONAL HEARING AND
PERMISSION FOR RE-EXPORT**

6. Vide letter dated 13.05.2019, addressed to the Additional Commissioner of Customs, CH Kandla, M/s. PYN Systems India Pvt. Ltd, Delhi have informed that their cargo is stock lot of various fast moving international Brands, it's our dated Tech as per Overseas countries from where it has not been put to use hence forth. It has been further submitted that they have sourced it for Export purpose for which have not made payments to Shipper. Further, they undertake that the same are not meant for clearance into Local Market India on payment of applicable duties. Further, they have requested to permit them for personal hearing for these shipments and requested to release the shipments to re-export the same.

6.1 Further, Vide letter dated 05.08.2019, addressed to the Additional Commissioner of Customs, CH Kandla, M/s. PYN Systems India Pvt. Ltd, Delhi have informed that they don't want Show Cause Notice and personal hearing and their case may be decided on merits. Further, they have sourced it for Export purpose for which have not made payments to Shipper. Further, they undertake that the same are not meant for clearance into Local Market India on payment of applicable duties. They have requested to release the shipment at the earliest to allow them to Re-Export. Shri Hemant Kumar Kohli Proprietor of M/s. PYN Systems India Pvt. Ltd., Delhi in his statement recorded on 08.03.2019 under Section 108 of the Customs Act, 1962 has also requested for re-export of the said consignments.

DISCUSSION AND FINDINGS

7. I have carefully gone through the case records, facts of the case and the submissions made by M/s. PYN Systems India Pvt. Ltd. Delhi and I find that they have waived the issuance of Show Cause Notice, however requested for personal hearing vide their letter dated 13.05.2019 but later on, they also waived the opportunity of personal hearing vide their letter 05.08.2019. Further, Shri Hemant Kumar Kohli, Proprietor of M/s. PYN Systems India Pvt. Ltd, Delhi in his statement recorded on 08.03.2019 under Section 108 of the Customs Act, 1962 has also requested that they do not want any Show Cause Notice or Personal Hearing in this regard. He has also requested that they may be permitted to re-export the cargo. Thus, the principle of natural justice has been completed.

7.1 Now, I proceed to decide the case on the basis of the documents available on record. I find that importer have filed three warehouse Bills of Entry, showing the description of goods/ declared goods as "Mini Tower desktop computer case with Pentium and core 2 duo CPU and Motherboard (without HDD and RAM), Mini Tower desktop computer case with Motherboard (without CPU, HDD and RAM), 160 GB Hard Disk Drive, 160 GB IDE Hard Disk Drive & Desktop Motherboard 945" and nowhere it is declared that the said goods are meant for re-export. On physical verification of goods by the officers during panchnama proceeding and as per examination report of M/s HP India Sales Pvt. Ltd. dated 27.02.2019 and M/s. Lenovo India Pvt. Ltd. dated 06.03.2019, as aforesaid imported goods are of HP, Lenovo and DELL brand, were found to be old and used. Further, Shri Hemant Kumar Kohli Proprietor of M/s. PYN Systems India Pvt. Ltd. Delhi in his statement recorded on 08.03.2019 under Section 108 of the Customs Act, 1962 has also confirmed that the goods imported were old and used.

7.2 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.

7.3 I find that the above said imported goods are old and used parts of HP and DELL brand computer. Therefore, in similar case of other importers, the authorized representatives of these brands were informed for their inspection. In response, only HP India Sales Pvt. Ltd. & M/s. Lenovo

India Pvt. Ltd had inspected the goods and submitted their inspection report vide their letter dated 27.02.2019 & 06.03.2019 respectively. But, no notice has been given by the brand holder for suspension of clearance of these goods as provided under the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. Moreover, vide letter dated 05.08.2019, the importer has given an undertaking to the effect that the cargo in question is not meant for clearance in to India it is intended for re-export, hence, the provisions of IPR and BIS are not applicable.

7.4 Further, I find that these goods are found to be used or Second Hand Goods , hence, import of the same is restricted as per 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. **1,29,12,235.76** are liable for confiscation under Section 111(d) of the Customs Act, 1962.

7.5 I further find that the importers have filed warehousing Bills of Entry and pleaded by the importer in his statement dated 08.03.2019 as well as vide their letter dated 13.05.2019 and 05.08.2019, that they imported the consignment for the purpose of Re-export and that is why they have filed warehousing Bills of Entry. I find that para 2.36(a) of the Foreign Trade Policy provide a facility to the importers to keep their any goods except prohibited goods in warehouse. As the goods are restricted, they have the facility to warehouse the goods under para 2.36 of the Foreign Trade Policy in Bonded warehouse.

7.6 Also, in regard to confiscation of the seized imported goods, I find that the imported goods having total assessable value of Rs. **1,29,12,235.76** are liable for confiscation in terms of Section 111 (d) and 111(m) of the Customs Act, 1962. I also find that the importer M/s. PYN Systems India Pvt. Ltd, Delhi is liable for penalty under Section 112 of the Customs Act, 1962 for their acts and omission making goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

7.7 Also, I find that 4730 motherboard found against declared 4500 vide Warehouse Bill of Entry No. 1000253 dated 07.01.2019 for Container Number BEAU2595712 which resulted into excess quantity of 230 nos. of motherboard valued at Rs. 2,01,378/- arrived at on the basis of the Chartered Engineer (Mechanical), Govt Approved Valuer's Inspection and Valuation report dated 27.03.2019 are liable to be confiscated under section 111(f) of Customs Act, 1962. As per section 111(f) of the Customs Act, 1962, "any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which is not so mentioned." In the instant case, I find that the quantity of 230 nos. of motherboard valued at Rs. 201378/- is found excess during Panchnama proceedings is to be confiscated under section 111(f) of Customs Act, 1962.

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

ORDER

- a. I order for confiscation of the goods covered under three Warehouse Bills of Entry No. 1018840/26.12.2018, 1018842/26.12.2018 and 1000253/07.01.2019 of old and used parts of HP, Lenovo and DELL brands computer, Hard Disk Drive valued at Rs. **1,29,12,235.76/-**

under Section 111(d), 111(m) and 111(f) 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. 12,00,000.00 (Rupees Twelve Lakh only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.

- b. I also order for confiscation of 230 Nos. of motherboard valued at Rs. 2,01,378/- against Warehouse Bill of Entry No. 1000253 dated 07.01.2019 for Container Number BEAU2595712 under Section 111(f) 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. 25,000.00 (Rupees Twenty Five Thousand only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.
- c. I also impose a penalty of Rs.5,00,000.00 (Rupees Five Lakh only) on M/s. PYN Systems India Pvt. Ltd., A-3/36, Dal Mill Road, Uttam Nagar, New Dehli- 110059 under Section 112(a) of the Customs Act, 1962.
- d. 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

F. No. S/15-02/PYN/SIIB/2018-19

Kandla, dated: 04.09.2019

To,
M/s. PYN Systems India Pvt. Ltd.,
A-3/36, Dal Mill Road,
Uttam Nagar, New Dehli- 110059

Copy to:

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