



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.	S/15-03/KB/SIIB/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/13/2019-20
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	12.09.2019
E	जारी करने की दिनांक/Date of issue	12.09.2019
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. KB Enterprises, Plot No-4C, Verma Road, Uttam Nagar, New Delhi-110059

- यह अपील आदेश संबन्धित को नि प्रदान शुल्क: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 प्रतियाँ 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

मंजिल वी 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 - 1, Item 6 of the Court Fees Act, 1870.
- अपील जापान 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 नियम (अपील), अधिनियम शुल्क सीमा और 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 KB Enterprises, (IEC No. 0516929208),(GSTIN- 07AKLPJ0627M1ZY) (PAN No. AKLPJ0627M), Plot No-4C, Verma Road, Uttam Nagar, New Delhi-110059, a Proprietorship firm engaged in trading activities and M/s Flamingo Logistics, 18, KASEZIA Building, KASEZ, Gandhidham is providing Warehousing facility for the warehousing and trading of electronic items. Further, M/s Flamingo Logistics, KASEZ filed Warehouse Bills of Entry as per the details below:-

Sr. No.	Warehousing Bill of Entry No. & Date, Container No.	Items Descriptions	Quantity (in Pcs)	Assessable value (Rs.)
1.	1018597 dated 20.12.2018, SKLU1595800	160 GB Hard Disk Drive	440	6638892/-
		250 GB Hard Disk Drive	1560	
		320 GB Hard Disk Drive	1100	
		500 GB Hard Disk Drive	1240	
		160 GB Hard Disk Drive (Laptop)	47	
		250 GB Hard Disk Drive (Laptop)	74	
		320 GB Hard Disk Drive (Laptop)	91	
		500 GB Hard Disk Drive (Laptop)	112	
		80 GB Hard Disk Drive (Laptop)	54	
		Desktop Motherboard 945	2520	
2.	1000407 dated 09.01.2019, SEGU159806	160 GB Hard Disk Drive	2400	8221727/-
		250 GB Hard Disk Drive	1760	
		320 GB Hard Disk Drive	640	
		500 GB Hard Disk Drive	1200	
		Desktop Motherboard 945	2420	
TOTAL				1,48,60,619/-

1.1 Further, acting on an Intelligence communicated vide letter F.No.DRI/AZU-GI/1/INT-01/2019 dated 04.01.2019 from DRI, AZU, Ahmedabad that consignments of second hand computers and / or second hand parts / spares of laptops and computers has been imported and the said consignments 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 been "material altered or impaired" by way of being dis-assembled parts with a request of 100% Examination of the subject consignments, the cargo was examined by the Officers of SIIB Section, Kandla Customs vide Panchnama dated 10.01.2019 for Warehousing Bill of Entry No. 1018597 dated 20.12.2018 and Panchnama dated 12/13.02.2019 for Warehousing Bill of Entry no. 1000407 dated 09.01.2019, with the key details as below:-

TABLE-A

Sr. No.	Warehousing Bill of Entry No. & Date, Container No.	Items Descriptions	Quantity (in Pcs)	Panchnama Date
1.	1018597 dated 20.12.2018, SKLU1595800	160 GB Hard Disk Drive	440	10.01.2019
		250 GB Hard Disk Drive	1560	
		320 GB Hard Disk Drive	1100	
		500 GB Hard Disk Drive	1240	

		160 GB Hard Disk Drive (Laptop)	47	
		250 GB Hard Disk Drive (Laptop)	74	
		320 GB Hard Disk Drive (Laptop)	91	
		500 GB Hard Disk Drive (Laptop)	112	
		80 GB Hard Disk Drive (Laptop)	54	
		Desktop Motherboard 945	2520	
2.	1000407 dated 09.01.2019, SEGU159806	160 GB Hard Disk Drive	2400	12.02.2019 & 13.02.2019
		250 GB Hard Disk Drive	1760	
		320 GB Hard Disk Drive	640	
		500 GB Hard Disk Drive	1200	
		Desktop Motherboard 945	2420	
		17" LCD Monitor	1152	

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

1.2.1 Panchnama dated 10.01.2019 for Warehouse Bill of Entry No. 1018597 dated 20.12.2018 for Container Number SKLU1595800:-

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 said units / imported goods were manufactured during the year 2004-2015 as the date available on Hard Disk Drive. It has also been found that the said Hard Disk Drive for computer are of various Brands viz. WESTERN DIGITAL, SEAGATE, EXCEL STORE, HITACHI, SAMSUNG, MAX TOR, MAGNETIC DATA, UTANIA, IBM, TOSHIBA, HGST, MY STOR etc and Hard Disk Drive for laptop are of various Brands viz. FUJITSU, MARSHAL, TOSHIBA, HGST, WESTERN DIGITAL, SEAGATE, HITACHI, SAMSUNG, UTANIA etc. Also during the examination total 2579 units of Desktop Motherboard 945 found against declared 2520 units.

1.2.2 Panchnama dated 12.02.2019 and 13.02.2019 for Warehouse Bill of Entry No. 1000407 dated 09.01.2019 for Container Number SEGU159806:-

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 said units / imported goods were manufactured during the year 2004-2013 as the date available on Hard Disk Drive for computers. It was also found that the said Hard Disk Drive for computers are of various Brands viz. WESTERN DIGITAL, SEAGATE, EXCEL STORE, HITACHI, SAMSUNG, MAGNETIC DATA, IBM, TOSHIBA, HGST etc. Also during the examination total quantity 7509 PCS of Hard Disk Drive for computer found against declared 6000 PCS. Details of the same are given in below table:-

Brand	Quantity (In PCS)										
	160 GB	250 GB	320 GB	500 GB	164 GB	200 GB	300 GB	400 GB	640 GB	750 GB	1000 GB
Westrn Digital	846	503	86	414	0	31	0	0	15	0	0
Seagate	1317	1027	541	311	0	33	0	4	0	0	0
Hitachi	283	811	584	540	12	21	6	0	0	1	1
Magnetic Data	1	0	0	1	0	0	0	0	0	0	0
IBM	9	0	0	0	0	0	0	0	0	0	0
HGST	0	11	0	12	0	0	0	0	0	0	0
Toshiba	0	11	0	73	0	0	0	0	0	0	0
Samsung	2	0	0	1	0	0	0	0	0	0	0
Excel Store	1	0	0	0	0	0	0	0	0	0	0
Total	2459	2363	1211	1352	12	85	6	4	15	1	1

Further, during the examination, it was also found that the motherboard are of various Brands viz. A.S. Rock, ASUS, BIOSTAR, ECS, FOXCONN, GIGA BYTE, INTEL, MSI, SAMSUNG etc and brand of some motherboard are unrecognized. Also, it was found that the 17" LCD Monitors are of HP, DELL, LG and Samsung Brands.

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 DELL India Pvt. Ltd.

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 Navneet Singh Rana, Manager and Authorised Representative of M/s KB Enterprises, Plot No-4C, Verma Road, Uttam Nagar, New Delhi-110059 in his statement recorded on 07.03.2019 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 KB Enterprises, with the supplier and submitted Performa invoice, Commercial Invoice and Packing List.
- 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 is old and appears to be used. The Cargo is not similar to the one they ordered. He further stated that in their Performa invoice they declared the goods as " All Hard Disk Drive & Motherboard will be new".

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.

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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 160 GB Hard Disk Drive, 250 GB Hard Disk Drive, 320 GB Hard Disk Drive, 500 GB Hard Disk Drive, 160 GB Hard Disk Drive (Laptop), 250 GB Hard Disk Drive (Laptop), 320 GB Hard Disk Drive (Laptop), 500 GB Hard Disk Drive (Laptop), 80 GB Hard Disk Drive (Laptop), Desktop Motherboard 945, 17" LCD Monitor in their Bill of lading, Warehouse 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 it is found that the goods imported were old and used items. Further, Shri Navneet Singh Rana, Manager and Authorised Representative of M/s KB Enterprises, Delhi in his statement recorded on 07.03.2019 under Section 108 of the Customs Act, 1962 also confirm that the goods imported were old and used.

5.2 Further, though the SEZ Entity M/s Flamingo Logistics, KASEZ, Gandhidham had filed the Warehouse Bills of Entry for the said cargo on behalf of their client M/s KB Enterprises, Delhi and declared the description of goods as 160 GB Hard Disk Drive, 250 GB Hard Disk Drive, 320 GB Hard Disk Drive, 500 GB Hard Disk Drive, 160 GB Hard Disk Drive (Laptop), 250 GB Hard Disk Drive (Laptop), 320 GB Hard Disk Drive (Laptop), 500 GB Hard Disk Drive (Laptop), 80 GB Hard Disk Drive (Laptop), Desktop Motherboard 945, 17" LCD Monitor 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, Warehouse 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 10.01.2019 for Warehouse Bill of Entry No. 1018597 dated 20.12.2018 for Container Number SKLU1595800, it is observed that in total 2579 motherboard found against declared quantity of 2520 and hence the excess quantity of 59 nos. of motherboard found are liable to be confiscated under section 111(m) of Customs Act, 1962. As regards the value of the said excess goods, the Chartered Engineer (Mechanical), Govt.

Approved Valuer, vide their Inspection and Valuation report dated 27.03.2019 reported that based on the status of the Cargo, Aging & Technology involved, the invoice value of the Cargo are fair & reasonable. Accordingly, the assessable value has been taken based on the Chartered Engineer (Mechanical), Govt Approved Valuer, vide their Inspection and Valuation report dated 27.03.2019 and based on the value declared in the Warehouse Bill of Entry No. 1018597 dated 20.12.2018, the rate of one motherboard comes to Rs. 877.97. Thus, the assessable value of excess goods i.e. 59 Motherboard comes to Rs. 51800.23 are liable to be confiscated under section 111(m) of Customs Act, 1962.

5.5 Further, during Panchnama dated 12.02.2019 and 13.02.2019 for Warehouse Bill of Entry No. 1000407 dated 09.01.2019 for Container Number SEGU159806, it is observed that in total 7509 nos of various capacity of Hard Disk Drive for Computer found against declared quantity of 6000 and hence the excess quantity of 1509 nos (Out 1509 nos of Hard Disk Drive, the capacity of 1385 nos of Hard Disk Drive are declared in Warehouse Bill of Entry No. 1000407 dated 09.01.2019 and the capacity of remaining 124 nos of Hard Disk Drive are non declared in said Warehouse Bill of Entry) of various capacity of Hard Disk Drive for Computer found are liable to be confiscated under section 111(m) of Customs Act, 1962. As regards the value of the said excess goods, the Chartered Engineer (Mechanical), Govt. Approved Valuer, vide their Inspection and Valuation report dated 27.03.2019 reported that based on the status of the Cargo, Aging & Technology involved, the invoice value of the Cargo are fair & reasonable. Accordingly, the assessable value of 1385 nos. of Hard Disk Drive which capacity declared in Warehouse Bill of Entry has been taken based on the Chartered Engineer (Mechanical), Govt Approved Valuer, vide their Inspection and Valuation report dated 27.03.2019 and based on the value declared in the Warehouse Bill of Entry No. 1000407 dated 09.01.2019, the rate of said 1385 nos. of Hard Disk Drive for Computer are given in below table:-

Description of Goods	Per PCS Assessable Value of Hard Disk Drive Declared in Warehouse Bill of Entry No. 1000407 dated 09.01.2019	Excess Quantity as per Panchnama Dated 12/13.02.2019	Total Assessable of Excess Quantity
160 GB Hard Disk Drive	581.863225	59	34329.93
250 GB Hard Disk Drive	800.0619375	603	482437.3
320 GB Hard Disk Drive	1018.104391	571	581337.6
500 GB Hard Disk Drive	1163.72645	152	176886.4
Total		1385	12,74,991/-

Thus, the assessable value of 1385 nos. of Hard Disk Drive comes to Rs. 12,74,991/- are liable to be confiscated under section 111(m) of Customs Act, 1962.

5.6. Further, as regards the value of the remaining excess Hard Disk Drive i.e. 124 nos of Hard Disk Drive which capacity has not been declared in Warehouse Bill of Entry No. 1000407

dated 09.01.2019, the Chartered Engineer (Mechanical), Govt. Approved Valuer, vide their Inspection and Valuation report dated 27.03.2019 reported for non declared goods that the value may be consider keeping in view to the nearest capacity components which in his consider opinion will be fair and reasonable. Now, the capacities of 124 nos of Hard Disk Drive are 164GB, 200GB, 300GB, 400GB, 640GB, 750GB & 1000GB and on the basis of Chartered Engineer (Mechanical), Govt. Approved Valuer, vide their Inspection and Valuation report dated 27.03.2019, the value of Hard Disk Drive having capacity viz. 164GB, 200GB, 300GB, 400GB & 640GB has been taken at the rate of Hard Disk Drive having capacity viz. 160GB, 250GB, 320GB & 500GB declared in the said Warehouse Bill of Entry. As regards the value of remaining Hard Disk Drive having capacity viz.750GB & 1000GB, value has been taken on pro rata basis considering the base value of 500 GB capacity Hard Disk Drive. Accordingly the assessable of 124 nos of Hard Disk Drive which capacity has not been declared in Warehouse Bill of Entry No. 1000407 dated 09.01.2019 are worked out and discussed herein below:

Description of Goods	Per PCS of Hard Disk Drive Assessable Value as per valuer report and pro rata basis	Excess Quantity as per Panchnama Dated 12/13.02.2019	Total Assessable of Excess Quantity
164 GB Hard Disk Drive	581.863225	12	6982
200 GB Hard Disk Drive	800.0619375	85	68005
300 GB Hard Disk Drive	1018.104391	6	6109
400 GB Hard Disk Drive	1018.104391	4	4072
640 GB Hard Disk Drive	1163.72645	15	17456
750 GB Hard Disk Drive	1745	1	1745
1000 GB Hard Disk Drive	2327	1	2327
Total		124	106697

Thus, the assessable value of excess goods of 1509 nos. of Hard Disk Drive (1385 nos. of Hard Disk Drive which capacities declared in said Warehouse Bill of Entry + 124 nos of Hard Disk Drive which capacities non-declared in said Warehouse Bill of Entry) comes to Rs. 13,81,688/- are liable to be confiscated under section 111(m) 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 KB Enterprises, 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 KB Enterprises, Delhi have informed that they don't want Show Cause Notice and personal and their case may be decided on merits. Further, they have sourced it for Export purpose for which has 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 Navneet Singh Rana, Manager and Authorized Representative of M/s KB Enterprises, Delhi in his statement recorded on 07.03.2019 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 KB Enterprises, Delhi and I find that they have waived the issuance of Show Cause Notice and opportunity of personal hearing vide their letter dated 13.05.2019 and 05.08.2019. 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 two warehouse Bills of Entry, showing the description of goods/ declared goods as "160 GB Hard Disk Drive, 250 GB Hard Disk Drive, 320 GB Hard Disk Drive, 500 GB Hard Disk Drive, 160 GB Hard Disk Drive (Laptop), 250 GB Hard Disk Drive (Laptop), 320 GB Hard Disk Drive (Laptop), 500 GB Hard Disk Drive (Laptop), 80 GB Hard Disk Drive (Laptop), Desktop Motherboard 945, 17" LCD Monitor" 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 as aforesaid imported goods are of HP, Samsung, LG and DELL brand, were found to be old and used. Further, Shri Navneet Singh Rana, Manager and Authorised Representative of M/s KB Enterprises, Delhi in his statement recorded on 07.03.2019 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, Warehouse 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, Samsung, LG and DELL brand computer. Therefore, the authorized representatives of these brands were informed for their inspection. In response, only HP India Sales Pvt. Ltd. had inspected the goods and submitted their inspection report vide their letter dated 27.02.2019. 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, the client, on whose behalf, the cargo has been ware-housed is a foreign entity and not registered in India and 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. 1,48,60,619/- 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 vide their letter dated 13.05.2019 and 05.08.2019, that they imported the consignment for the purpose of Re-export and that's 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. 1,48,60,619/- 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 KB Enterprises, 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 2579 motherboard found against declared 2520 vide Warehouse Bill of Entry No. 1018597 dated 20.12.2018 for Container Number SKLU1595800 which resulted into excess quantity of 59 nos. of motherboard valued at Rs. 51800.23 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 59 nos. of motherboard valued at Rs. 51800.23 is found excess during panchnama proceedings is to be confiscated under section 111(d) and (m) of Customs Act, 1962. I also find that the importer M/s KB Enterprises, 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.

7.8 I find that 7509 nos. of Hard Disk Drive for computer found against declared 6000 vide Warehouse Bill of Entry No. 1000407 dated 09.01.2019 for Container Number SEGU159806 which resulted into excess quantity of 1509 nos of Hard Disk Drive for computer valued at Rs. 13,81,688/- as discussed in para 5.5 and 5.6 hereinabove 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(d) and 111(m) of Customs Act, 1962. I also find that the importer M/s KB Enterprises, 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.

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

ORDER

- a. I order for confiscation of the goods covered under two Warehouse Bills of Entry No. 1018597 dated 20.12.2018 and 1000407 dated 09.01.2019 of old and used parts of HP, Samsung, LG and DELL brands computer, Hard Disk Drive valued at Rs. 1,48,60,619/- 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. 15,00,000.00 (Rupees Fifteen 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 59 nos. of motherboard valued at Rs. 51800.23 against Warehouse Bill of Entry No. 1018597 dated 20.12.2018 for Container Number SKLU1595800 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. 10,000.00 (Rupees Ten thousand only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.
- c. I also order for confiscation of 1509 nos. of Hard Disk Drive for computer valued at Rs. 13,81,688/- against Warehouse Bill of Entry No. 1000407 dated 09.01.2019 for

Container Number SEGU159806 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. 1,50,000.00 (Rupees One Lakh Fifty Thousand only) in lieu of confiscation under Section 125 of the Customs Act 1962 for re-export purpose only.

- d. I also impose a penalty of Rs.10,00,000.00 (Rupees Ten Lakh only on M/s KB Enterprises, Plot No-4C, Verma Road, Uttam Nagar, New Delhi-110059 under Section 112(a) of the Customs Act, 1962.
- e. I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.
9. The said order is issued without prejudice to any other action that may be taken against the Noticee under the provisions of the Customs Act, 1962 and/or the Rules made there under and/or any other law for the time being in force.


(Ajay Kumar)
Additional Commissioner,
Custom House, Kandla

F. No. S/15-03/KB Enterprise/SIIB/2018-19

Dated: 12.09.2019

To,
M/s. KB Enterprises,
Plot No-4C, Verma Road,
Uttam Nagar, New Delhi-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.