

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
	A. File No.	: F. No. VIII/48-66/Adj./ADC/MCH/2019-20
B. Order-in- Original No.	: MCH/ADC/AK/131/2019-20	
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.	
D. Date of order /Date of issue	: 31.03.2020/31.03.2020	
E. Show Cause Notice No. & Date	: VIII/48-382/LAR-10/18-19/Gr-III/Itamac/MCH/2019-20 Dated 07.10.2019	
F. Noticee(s)/Party/ Importer	: M/s Itamac Machinery Pvt. Ltd., S.No.159P1,Near Antalia Ceramic, Bela Rangpar, Taluka-Morbi, Gujarat-363641	

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A 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.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, 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.- Show Cause Notice F. No. VIII/48-382/LAR-10/18-19/Gr-III/Itamac/MCH/2019-20 dated 07.10.2019 issued to M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641

BRIEF FACTS OF THE CASE

M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641 (holder of IEC No. 2413014772) (hereinafter also referred to as "the importer"/Noticee") presented five Bills of Entry detailed in Annexure-I to the Show Cause Notice, through their Customs Broker M/s Aman Seatrans Pvt. Ltd., at Custom House, Mundra, for clearance of imported goods declared as "Mullite Brick , Mullite Hook Brick, Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper" classifying the same under Tariff Item 69022050 & 69039090 of first schedule of the Custom Tariff Act, 1975.

1.1 The subject five Bills of Entry dated from 08.10.2017 to 12.12.2017 were assessed wherein benefit provided at serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, of concessional rate of basic customs duty @ 5% was granted. The said entry 338 reads as under-

Sr. No.	Chapter or Heading or sub-heading or tariff item	Description of goods	Standard rate
338	6902 or 6903	<i>all goods</i>	5%

1.2 Under the impugned five Bills of Entry, the importer imported "Mullite Brick , Mullite Hook Brick, Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper" and availed benefit of concessional rate of duty under the above notification by classifying the same under CTH 69022050 & 69039090 which is available only to refractory goods i.e. fired articles having the special property of resisting high temperatures as met in metallurgy, the glass industry etc.(e.g. of the order of 1500⁰C and higher). The declared description suggests that the impugned imported goods were meant for Ceramic industries which require fired articles having the property of resisting temperatures 1000⁰C to 1200⁰C not more than that and should be classified under CTH 69149000. The Custom Tariff Item 69149000 contains " Other Ceramic Articles other than those of porcelain or china.". Thus, it appeared that in the subject five Bills of Entry, the importer has wrongly classified the goods under 69022050 & 69039090 & availed the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017 for imported goods i.e. "Mullite Brick , Mullite Hook Brick, Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper" which is not refractory goods and only refractory goods are covered under the said CTH. Therefore, it appeared that in the impugned five Bills of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e. 10% .

1.3 Further, it appeared that though the importer was aware that the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, was not available to the impugned goods but the importer wrongly availed the exemption under said notification by mis-classifying the goods under 69022050 & 69039090. Thus, it appeared that the subject

Bills of Entry are liable to be reassessed by rejecting the classification and classifying under 69149000 & denying the exemption. The differential Customs duty totally amounting to Rs. 7,61,536/- is liable to be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962. Further, it appeared that the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962 and have rendered themselves liable to penalty under Section 117 of the Customs Act, 1962.

2. In view of the above, a Show Cause Notice F.No. VIII/48-382/LAR-10/18-19/Gr-III/Itamac/MCH/2019-20 dated 07.10.2019 was issued whereby the importer M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641 was called upon to show cause to the Additional Commissioner of Customs (Import), Custom House, Mundra having his office at PUB Building 5B, Adani Port, Mundra, as to why:

- (i) the classification under Custom Tariff item No.69022050 & 69039090 should not be rejected and classification under Custom tariff heading No.69149000 should not be made on re-assessment.
- (ii) the exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017, claimed and availed by them in the five Bills of Entries detailed in Annexure-I should not be denied and the said Bills of Entries should not be reassessed under CTH 69149000.
- (iii) the differential Customs duty amounting to Rs.7,61,536/-, not paid by the importer in respect of the five Bills of Entries mentioned in Annexure-I by wrongly availing exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017 should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.
- (iv) penalty should not be imposed on them under section 117 of the Customs Act, 1962.

PERSONAL HEARING

3. The personal hearing in the case matter was granted on dated 18.12.2019, and further on 08.01.2020. However, no body appeared for the same on the scheduled dates and time. Thereafter, the personal hearing was fixed on 17.01.2020. The authorized representative of the Noticee viz. Shri Vikas Mehta of D'legal Customs Consultation & Litigation vide his e-mail dated 17.01.2020 informed that the Noticee has received the intimation letter of personal hearing just one day before so they are unable to attend the same on 17.01.2020 and requested for adjournment of hearing and to provide them new date of personal hearing in the last week of January, 2020 in the interest of natural justice.

Considering their request, the next date of personal hearing was fixed on 28.01.2020. Shri Vikas Mehta, authorized representative of the Noticee M/s Itamac Machinery Ltd., appeared for personal hearing on 28.01.2020 wherein he submitted a written reply dated 30.12.2019 and reiterated the facts mentioned therein. He further stated that he has nothing more to add.

DEFENCE SUBMISSION

4. The Noticee in their written defence reply dated 30.12.2019, submitted personally by Shri Vikas Mehta, authorised representative at the time of personal hearing on 28.01.2020, have made submissions, interalia, as under-

4.1 At the outset, the allegations and averments levelled in the notice are hereby denied.

4.2 In this regard, it is their submission that chapter heading 6902 does not make any distinction on the basis of resistance to temperatures. There are no slabs of temperatures for including any item in or excluding any item from chapter heading 6902. Hence, the entire criteria adopted in the notice for purpose of excluding the goods from chapter heading 6902 is not supported by law.

4.3 It is a matter of record that the exemption was allowed pursuant to assessment carried out by the assessing office. In this regard relying upon Hon'ble Supreme court judgment in case of ITC Ltd, Vs Commissioner of Central Excise, Kolkata-IV reported at 2019-TIOL-418-SC-CUS-LB, they stated that after having granted the exemption pursuant to self-assessment (which became order of assessment as duly held by Hon'ble Supreme Court), the department required to file appeal against the said assessment order, since it has not been done, there is no justification in issuing the notice at this point of time and therefore, on this ground also, the same is also liable to be vacated.

4.4 They invited attention to the fact that chapter sub-heading 69202050 of the first schedule to the Customs Tariff Act, 1975 specifically deals with Mullite Bricks. In as much as it is evident from Sl. No. 1, 2 and 3 of the Annexure-I to the notice that the goods imported by them were nothing but Mullite Bricks, there is no justification in classifying the same under residuary entry when there is a specific entry for Mullite bricks. In this regard, they relied upon the decision/judgment in the case of Commissioner of Central Excise V/s Wockhard Life Sciences Ltd. [2012(277) E.L.T.299(S,C.) wherein Hon'ble Supreme Court has held that :

“33. A commodity can not be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense....”

Hence, in the face of specific entry, there is no justification in proposing a residuary entry for any reason whatsoever as Mullite bricks is concerned.

4.5 As regard to refractory plate, ceramic fiber board and ceramic fiber paper, they contended that the same are used to support the Mullite bricks used in the kiln. It is not in dispute that these are refractory ceramic goods. The examples mentioned in chapter heading 6903 specifically include 'support'

4.6 In view of the above, they reiterated that all the goods mentioned in Annexure-I to the notice have been rightly classified under 6902 2050 (Sl. No. 1,2 & 3) and 6903 9090 (Sl.No. 4 to 14) of the First schedule to Customs Tariff Act,1975 and the assessing officer has not committed any error in accepting the classification and extending the benefit of Sl.No.338 of notification no. 50/2017-Cus dated 30.06.2017

4.7 They, therefore, prayed that the notice may be dropped by giving due consideration to the above submissions.

DISCUSSION AND FINDINGS

5. I have carefully gone through the Show Cause Notice dated 07.10.2019, the written reply dated 30.12.2019 filed by the Noticee, oral submissions made during the course of hearing on 28.01.2020, various letters dated 07.01.2020, 04.02.2020, 17.02.2020 and 24.02.2020 issued to Addl. Commissioner of different Commissionerates and Dy. Commissioner, (Group-III) and the available records of the case. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the classification under Custom Tariff item No.69022050 & 69039090 are liable for rejection and classification under Custom tariff heading No.69149000 is required to be made on re-assessment.
- (ii) Whether the exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017, claimed and availed by the importer in the five Bills of Entries detailed in Annexure-I of the Show cause Notice is liable to be denied and the said Bills of Entries are liable for reassessment under CTH 69149000.
- (iii) Whether the differential Customs duty amounting to Rs.7,61,536/-, not paid by the importer in respect of the five Bills of Entries mentioned in Annexure-I of the Show Cause Notice by wrongly availing exemption under serial No.338 of Notification No.50/2017-Cus dated 30.06.2017 is required to be demanded and recovered from the importer under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.
- (iv) Whether the importer is liable for penalty under section 117 of the Customs Act, 1962.

5.1 The foremost issue before me to decide in this case is as to whether the goods imported by the noticee by declaring the same as "Mullite Brick , Mullite Hook Brick, Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper" are classifiable under tariff

items 69022050 & 69039090 or under tariff item 69149000 of Customs Tariff Act, 1975 as alleged by the department in the Show Cause Notice. I find that the importer M/s Itamac Machinery Pvt. Ltd. (holder of IEC No. 2413014772) had filed five Bills of Entry as detailed in Annexure-I of the Show Cause Notice for clearance of goods declared as "Mullite Brick , Mullite Hook Brick, Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper". I find that the importer have classified the goods declared as "**Mullite Brick , Mullite Hook Brick**" under CTH 69022050 & further the "**Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper**" under CTH 69039090 of first schedule of the Custom Tariff Act, 1975 and availed the concessional rate of Basic Customs duty @ 5% under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017. In this connection, firstly I have gone through the concerned statutory provisions as provided under chapter notes as well as HSN explanatory notes of chapter 69 (Ceramic Products). The explanatory notes to the subject heading codes for tariff item 6901, 6902, 6903, and 6914 under Chapter 69 of Customs Tariff Act, 1975 reads as under-

I. Goods of Siliceous Fossil Meals or of Similar Siliceous Earths, and Refractory Goods

6901	Bricks, blocks, tiles and other ceramic goods of siliceous fossil Meals (for example, kieselguhr, tripolite or diatomic) or of similar siliceous earths
690100	-- Bricks, blocks, tiles and other ceramic goods of siliceous fossil Meals (for example, kieselguhr, tripolite or diatomic) or of similar siliceous earths
690100 10	--Bricks
69010020	--Blocks
69010030	-- Tiles
69010090	-- Other
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6902	Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods, other than those of siliceous fossil Meals or similar siliceous earths
690210	- Containing by weight, singly or together, more than 50% of the element Mg, Ca or Cr, expressed as MgO, CaO or Cr ₂ O ₃
69021010	---Magnesite bricks and shapes
690220	-Containing by weight more than 50% of alumina (Al ₂ O ₃), of silica (SiO ₂) or of a mixture of compound of these products
69022010	-- Silica bricks and shapes
69022020	-- High Alumina bricks and shapes
69022030	-- Alumina Carbon bricks and shapes
69022040	-- Silicon Carbide bricks and shapes
69022050	-- Mullite bricks
69022090	-- Other

6903	Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, support, cupels, tubes, pipes, sheaths and rods), <u>other than those of siliceous fossil meals or of similar siliceous earths</u>
6903 10	- Containing by weight more than 50% of graphite or other carbon or of a mixture of these products
6903 10 10	--Magnesia carbon bricks , shapes & graphitised alumina
6903 10 90	--Other
6903 20	-Containing by weight more than 50% of alumina (A2O3), of silica (SiO2) or of a mixture of compound of alumina and of silica(SiO2)
6903 20 10	-- Silicon carbide crucibles
6903 20 90	-- Other
6903 90	-- Other
6903 90 10	-- Zircon/zircon-mullite refractories
6903 90 20	-- Basalt tiles
6903 90 30	-- Ceramic fibres
6903 90 40	--Monolithics/castables (fire-clay basic silica high alumina insulating)
69039090	---Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods
690390 90	--- Other

Whereas, the explanatory notes to the subject heading codes for tariff item 6914 under Chapter 69 of Customs Tariff Act, 1975 reads as under-

6914 Other ceramic articles

69141000 -of porcelain or china

69149000- Other

In view of the above, I find that the heading 6902 covers **Refractory bricks, blocks, tiles and similar refractory ceramic constructional goods**, other than those of siliceous fossil meals or similar siliceous earths and further the heading 6903 covers **Other refractory ceramic goods (for example, retorts, crucibles, muffles, nozzles, plugs, support, cupels, tubes, pipes, sheaths and rods)**, other than those of siliceous fossil meals or of similar siliceous earths. I find that the chapter heading 6902 covers a group of refractory goods (other than those of 6901) normally used in the construction of ovens, kilns, furnaces or other plant for the metallurgical, chemical, ceramic, glass and other industries. However, I find that the composition and processing of refractories vary widely according to the application and the type of refractory. In respect of imported goods declared by the importer as “ **Mullite Bricks**” and classified under **CTH 69022050**, I find that Mullite Bricks are a kind of high alumina refractory materials with **Mullite (3Al₂O₃.2SiO₂)** as the main

crystal phase and containing 65-75% alumina (Al_2O_3) content and they are widely used in regenerative chamber of glass melting furnace and Ceramic high temperature furnace having refractoriness i.e. resisting temperature higher up to $1790^{\circ}C$. Further, **on going through HSN explanatory notes to tariff sub-heading 6902 20, I find that "Mullite Bricks" are specifically classified under Customs Tariff Item 6902 2050**, hence I find that the imported goods declared as "Mullite Bricks" by the importer M/s Itamac Machinery Pvt. Ltd. are correctly classifiable under CTH 6902 2050 of the first schedule to the Customs Tariff Act, 1975. Further, in respect of other goods declared as **"Refractory Plate, Ceramic Fiber Board and Ceramic Fiber Paper" and classified under CTH 69039090**, I find that different types of refractories are used depending on temperatures and service conditions of the applications, Refractory plates are of various types and their applications are also different such as refractory honeycomb ceramic plates has an important application in the field of gas heating for technical ceramics, Refractory cordielite ceramic base plate is widely used in engineering, mechanical seals, electronics, instrumentation, sensing, transport communications, and other occasion or areas, Refractory thin ceramic plate has main applications in shaft, plunger, sealing structure, automobile industry, oil drilling equipment, insulation parts in electrical equipment, ceramic hair clipper spare parts etc. I find that the "Ceramic Fiber Boards" are rigid self supporting insulating product manufactured from refractory ceramic fibers also called man-made mineral fibers (MMMFs) which include alkaline earth silicate wool, glass wool, rock(stone) wool, slag wool etc. Further, I find that the another product **"Ceramic Fiber Paper"** is an alumino-silicate ceramic fiber based non-woven fabric which is manufactured through a special paper-making process with high purity washed fibres, having applications in thermal insulation, gasket, seal separator for ceramic industry and are suitable for high temperature insulation as high as $1200^{\circ}C$. I find that the impugned imported goods meant for Ceramic Industries are having the property of resisting temperatures $1000^{\circ}C$ to $1200^{\circ}C$ and not more than that. Hence, I find that the importer has wrongly classified the subject goods under Custom tariff item 69039090 of Customs Tariff Act, 1975. Thus as discussed above, the classification of the goods viz. "Refractory Plate, Ceramic Fiber Board and Ceramic Fiber Paper" imported by the noticee by mis-declaring the same under Customs Tariff item No. 69039090 is liable for rejection and I hold that it should be re-classified under Customs tariff item No. 69149000 (other ceramic products other than those of porcelain or china), of the first schedule to the Customs Tariff Act, 1975 and should be reassessed accordingly.

5.2 The Show Cause Notice has proposed that the benefit of exemption under serial No. 338 of Notification No. 50/2017-Customs dated 30.06.2017 availed by the importer by paying basic customs duty @ 5% is not available on the impugned goods i.e. "Mullite Brick/Mullite Hook Brick" classified under tariff item No. 69022050, "Refractory Plate, Ceramic Fiber Board, Ceramic Fiber Paper" classified under tariff item No.69039090 of Customs Tariff Act, 1975 and they are required to pay basic customs duty @ 10%.

Relevant portion of the Notification No.50/2017-Cus dated 30.06.2017, reads as under

S. No.	Chapter or heading or sub-heading or tariff item	Description of Goods	Standard Rate	IGST	Condition No.
1	2	3	4	5	6
338	6902, or 6903	All goods	5%	-	-

From the above, I find that the concessional rate of duty under serial number 338 of the said Notification is applicable to Customs tariff items falling under 6902, or 6903 whereas the imported goods declared as "Refractory Plate, Ceramic Fiber Board and Ceramic Fiber Paper" are correctly classifiable under tariff item 6914900. Thus, I find that in the subject **three Bills of Entry** detailed at Sr. No. 04 to 14 of the Annexure-I of the Show cause Notice, the importer has purposefully mis-classified the goods to wrongly avail the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017. Since exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is not available to the goods covered under tariff item 69149000, I hold that the claimed exemption is liable to be denied and the said three Bills of Entry are liable to be re-assessed under Section 17 of the Customs Act,1962 by classifying impugned goods under tariff item 69149000 and accordingly, Basic Customs duty at the prevailing tariff rate i.e. 10 % is liable to be charged. However, in respect of goods declared as "Mullite Brick/ Mullite Hook Brick" and classified under tariff item No.69022050 of Customs Tariff Act, 1975, I find that the same are correctly classifiable under tariff item No.69022050 and accordingly on merits it is held that the exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is available to the goods having description as " Mullite Bricks" under tariff item No.69022050 .

5.3 As regard proposal in the Show Cause Notice for demand of differential Customs duty alongwith applicable interest, I find that the Noticee in their defence submission have submitted that after due verification all the Bills of Entry were finally assessed by the proper officer/Customs authorities and Section 28 of the Customs Act, 1962 do not provide the authority to reassess the already finally assessed Bills of Entry. However, I find that with the introduction of self-assessment and consequent upon amendments to Section 17, since 8th April, 2011, it is the responsibility of the importer to declare the correct description, value, notification etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. The importer failed to discharge the legal and statutory obligation in correct determination of description & classification of imported goods and duty payable. I find that the Noticee have self-assessed the said five Bills of Entry in terms of Section 17 of the Customs Act, 1962, however, I find that in respect of three Bills of Entry detailed at Sr. No. 04 to 14 of Annexure-I of the Show Cause Notice, the Importer have contravened the provisions of Section 46 (4) of the Customs Act, 1962 in as much as they had intentionally availed/taken a wrong Customs duty benefit in terms of serial number 338

of the Notification No. 50/2017-cus dated 30.06.2017. I find no force in this contention because Section 28 of the Customs Act, 1962 does not differentiate or debar demand in such situation. The assessments under Section 17 are without prejudice to Section 46 and subsequent action including demand of differential duty with interest or any other action under the provisions of the Customs Act, 1962. Since exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is not available to the impugned goods declared as "Refractory Plate, Ceramic Fiber Board and Ceramic Fiber Paper" and the said exemption is liable to be denied and accordingly, Basic Customs duty at the prevailing tariff rate i.e. 10 % is liable to be charged in respect of goods covered under Bills of Entry detailed at Sr. No. 04 to 14 of Annexure-I of the Show Cause Notice, I, therefore, hold that the importer M/s Itamac Machinery Pvt. Ltd. is required to pay the differential Customs duty of **Rs.1,15,770/-[total differential duty for Bills of Entry detailed at Sr. No. 04 to 14 of Annexure-I of the SCN]** under Section 28(1) of the Customs Act, 1962 along with interest at appropriate rate on the said amount of **Rs.1,15,770/-** under the provisions of Section 28AA of the Customs Act,1962. Further, in respect of goods viz. "Mullite Bricks" covered under only two Bills of Entry[**detailed at Sr. No. 01 to 03 of Annexure-I of the SCN**], since the same are correctly classifiable under heading 69022050 and the exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is available to the impugned goods, **the importer is not required to pay the remaining customs duty of Rs. 6,45,766/- (Rupees Six Lakh Forty Five Thousand Seven Hundred Sixty Six only) under Section 28(1) of the Customs Act,1962.** Consequently, they are also not liable to pay Interest at appropriate rate on the said **amount of Rs. 6,45,766/-** under provision of Section 28AA of the Customs Act, 1962.

5.4 As regard proposal in the Show Cause Notice for imposition of penalty on the importer under Section 117 of the Customs Act,1962, I find that Section 117 of the Customs Act,1962 stipulates that any person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]. I further find that Section 17(1) of the Customs Act, 1962 authorises any Importer or exporter of the goods to self assess the duty leviable on the Import or export of goods. In the instant case, I find that the importer was aware that the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, was not available to the goods viz. "Refractory Plate, Ceramic Fiber Board and Ceramic Fiber Paper" but they deliberately assessed the concerned three Bills of Entry (mentioned at Sr.No. 04 to 14 in Annexure-I of the SCN) under Section 17(1) of the Customs Act, 1962 by wrongly availing the said exemption. Thus, I find that the importer has contravened the provisions of Section 17(1) of the Customs Act, 1962 and accordingly I hold that the penalty under Section 117 of the Customs Act, 1962 are attracted

on the importer M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641.

6. In view of the forgoing discussions and findings, I pass the following order:-

ORDER

- (i) I reject the declared classification of imported goods viz. "Refractory Plate, Ceramic Fiber Board and Ceramic Fiber Paper" under Custom Tariff item 69039090 of the First Schedule to the Customs Tariff Act, 1975 and order to classify the same under Custom tariff item 69149000 and reassess accordingly. I accept the declared classification of imported goods viz. "Mullite Brick and Mullite Hook Brick" under Custom Tariff item 69022050 of the First Schedule to the Customs Tariff Act, 1975.
- (ii) I reject the importers claim of exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017 in respect of only three Bills of Entry [as detailed at Sr.No. 04 to 14 in Annexure-I to the Show Cause Notice] and order to re-assess the said three Bills of Entry under Custom Tariff Item 69149000.
- (iii) I confirm and order to recover the differential Customs duty amounting to **Rs.1,15,770.00 (Rupees One Lakh Fifteen Thousand Seven Hundred Seventy only)**[total differential duty in respect of the three Bills of Entry detailed at Sr. No. 04 to 14 of Annexure-I of the SCN] from the importer M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641, for wrongly availing exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, under Section 28(1) of the Customs Act, 1962.
- (iv) I drop the demand of remaining differential Customs duty of **Rs. 6,45,766.00 (Rupees Six Lakh Forty Five Thousand Seven Hundred Sixty Six only)** [total differential duty in respect of the two Bills of Entry detailed at Sr. No. 01 to 03 of Annexure-I of the SCN] from the importer M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641, for correctly availing exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017, under Section 28(1) of the Customs Act, 1962.
- (v) I order to charge and recover interest from the importer M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641, on the confirmed duty at Sr. No. (iii) above under Section 28AA of the Customs Act, 1962
- (vi) I also impose a penalty of Rs.25,000.00 (Rupees Twenty Five Thousand only) on the importer M/s Itamac Machinery Pvt. Ltd., S.No. 159P1, Near Antalia Ceramic, Bela Rangpar, Tal.-Morbi, Gujarat-363641 under Section 117 of the Customs Act, 1962.

7. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.


(Ajay Kumar)

Additional Commissioner,
Custom House, Mundra

F. No. VIII/48-66/Adj./ADC/MCH/2019-20

Date: 31.03.2020

BY SPEED POST

To

M/s Itamac Machinery Pvt. Ltd.,
S.No.159P1,Near Antalia Ceramic,
Bela Rangpar, Taluka-Morbi,
Gujarat-363641



Copy to:

1. The Commissioner of Customs, Custom House, Mundra.
2. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
5. The Deputy/Assistant Commissioner (GR-III), Custom House, Mundra.
6. The Deputy/Assistant Commissioner (Audit), Custom House, Mundra.
7. Guard File