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|  | | 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/48-67/Adj./ADC/MCH/2019-20 |
| B. Order-in- Original No. | : | MCH/ADC/AK/132/2019-20 |
| 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/Mahalaxmi/MCH/2019-20 Dated 10.10.2019 |
| F. Noticee(s)/Party/ Importer | : | M/s Mahalaxmi International, Shakti Chambers -2, Shop No.28-29, 8-A, National Highway, Trajpar Morbi, Gujarat-363642 |

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/Mahalaxmi/MCH/2019-20 dated 10.10.2019 issued to M/s Mahalaxmi International, Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642


BRIEF FACTS OF THE CASE

M/s Mahalaxmi International, Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642 (holder of IEC No. 2410004334) (hereinafter also referred to as "the importer"/Noticee") presented three Bills of Entry detailed in Annexure-I to the Show Cause Notice, through their Customs Broker M/s Sai Clearing and Forwarding Agency, at Custom House, Mundra, for clearance of imported goods declared as " Alumina Brick , SIC Burner Tube, Ceramic Roller " classifying the same under Tariff Item 69022020 & 69039090 of first schedule of the Custom Tariff Act, 1975.

1.1 The subject three Bills of Entry dated from 16.10.2017 to 18.12.2017 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 three Bills of Entry, the importer imported " Alumina Brick ,SIC Burner Tube, Ceramic Roller" and availed benefit of concessional rate of duty under the above notification by classifying the same under CTH 69022020 & 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 three Bills of Entry, the importer has wrongly classified the goods under 69022020 & 69039090 & availed the exemption under serial No. 338 of Notification No. 50/2017-Cus dated 30.06.2017 for imported goods i.e. " Alumina Brick , SIC Burner Tube, Ceramic Roller " which is not refractory goods and only refractory goods are covered under the said CTH. Therefore, it appeared that in the impugned three 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 69022020 & 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. 

6,64,734/- 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/Mahalaxmi/MCH/2019-20 dated 10.10.2019 was issued whereby the importer M/s Mahalaxmi International, Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642 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.69022020 & 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 three 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.6,64,734/-, not paid by the importer in respect of the three 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 was granted on dated 17.12.2019. No body appeared for the same on the scheduled date and time. Thereafter, next date of personal hearing was fixed on 03.01.2020. Shri Rohit S. Chudasama, Partner and authorized representative of M/s Mahalaxmi International attended the hearing on 03.01.2020 wherein he stated that he has already submitted written submissions dated 02.12.2019 and 09.12.2019 and reiterated the submissions made therein. He further stated that he has nothing more to add.

DEFENCE SUBMISSION

4. The Noticee vide their letter on dated 02.12.2019 and further vide another letter dated 09.12.2019, received to the department on 11.12.2019, have made submissions, interalia as under-

4.1 Their imported products are used in manufacturing of ceramic industry machines and they have imported their goods under correct classification.

4.2 The Customs had provisionally assessed the bills of entry and customs had drawn samples from various consignments and send those samples for analysis for confirmation of nature and composition of imported refractory goods to the CGCRI, Ahmedabad.

4.3 They had finalized provisional assessment bill of entry after coming of positive analysis reports from CGCRI, Ahmedabad.

4.4 The report from CGRI shows that the temperature is higher than the temperature mentioned in chapter note.

4.5 They already have fulfilled all the processes, before the release of the consignment from the customs.

4.6 In view of the above, they request that the said show cause notice may please be dropped.

DISCUSSION AND FINDINGS

5. I have carefully gone through the Show Cause Notice dated 10.10.2019, the written submissions dated 02.12.2019 and 09.12.2019 filed by the Noticee, oral submissions made during the course of hearing on 03.01.20020, 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.69022020 & 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 three 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.6,64,734/-, not paid by the importer in respect of the three 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 them 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 “Alumina Brick ,SiC Burner Tube, Ceramic Roller ” are classifiable under tariff items 69022020 & 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 Mahalaxmi International (holder of IEC No. 2410004334) had filed three Bills of Entry as detailed in Annexure-I of the Show Cause Notice for clearance of goods declared as “ Alumina Brick , SiC Burner Tube, Ceramic Roller ”. I find that they have classified the goods declared as “ **Alumina Brick**” under **Chapter heading 6902 & the SiC Burner Tube, & Ceramic Roller under CTH 6903** 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 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

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 Cr₂O₃
 69021010 ---Magnesite bricks and shapes
 690220 -Containing by weight more than 50% of alumina (Al₂O₃), of silica (SiO₂) 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. It includes ,interalia: Bricks of all shapes(parallelepiped, wedge shaped, cylindrical, semi-cylindrical etc.), including keystones and other specially shaped bricks(e.g. runner bricks, concave on one face and rectilinear on the others) even if they are clearly recognizable as being of the kind specially designed for the construction of plant or machinery of Section XVI. I find that the composition and processing of refractories vary widely according to the application and

the type of refractory. I find that Alumina Bricks are demanded in construction and maintenance fields for preparing heat resisting walls, roofs and other structures. However, I find that the impugned imported goods were meant for Ceramic Industries which require fired articles having the property of resisting temperatures 1000⁰C to 1200⁰C and not more than that. Hence, I find that the importer has wrongly classified the subject goods under Custom tariff item 69022020 of Customs Tariff Act, 1975. Thus as discussed above, the classification of the goods viz. "Alumina Brick" imported by the noticee by mis-declaring the same under Customs Tariff item No. 69022020 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. Further, in case of **imported goods declared as "SiC Burner Tube,**" and classified under chapter heading 6903 of first schedule of the Customs tariff Act, 1975, I find that the impugned imported goods are especially Silicon Carbide (SiC) materials mainly composed of silica and are reaction-bonded (Silicon infiltrated) Silicon Carbide being formed zero porosity by filling up open porosity with Silicon and are having applications as flame tubes depending on the application temperature and atmosphere as the burner nozzles are also used for heating on either direct or indirect furnace system, whereas **chapter heading 6903 covers Other refractory ceramic goods** (for example, retorts, crucibles, muffles, nozzles, plugs, support, cupels, tubes, pipes, sheaths and rods), excluding those of siliceous fossil meals or of similar siliceous earths. This heading also covers the group of refractory products other than those of 6901 and 6902. Hence, I find that the importer has wrongly classified the subject goods under heading 6903 of Customs Tariff Act, 1975. Thus as discussed above, the classification of the goods viz. "**SiC Burner Tube**" imported by the noticee by mis-declaring the same under chapter heading 6903 is liable for rejection and I hold that it should be re-classified under tariff item 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. Further, in respect of last item declared as "Ceramic Roller" and classifying the same under CTH 69039090 of first schedule of the Custom Tariff Act, 1975, I find that Ceramic Rollers are widely used in Kiln for fast firing of wall tiles, floor tiles, vitrified tiles etc and they need to satisfy specific criteria such as excellent thermal shock resistance, **high alumina content with superior strength in high temperature** are akin to the refractory ceramic products included under sub-heading 6903. I also refer to the Notification No.27/2018-Customs(ADD) dated 17.05.2018 vide which the Government of India, Ministry of Finance(Department of Revenue), New Delhi has imposed definitive anti-dumping duty on goods having description as "Ceramic Rollers" falling under sub-heading 6903 of the First Schedule to the Customs Tariff Act, 1975 originating in or exported from the Peoples Republic of China and exported in to India, in order to remove injury to the domestic Industry. In view of the above facts also, I find that the Ceramic Rollers being specifically mentioned under heading 6903, their correct classification has to be under CTH 69039090 of first schedule of the Custom Tariff Act, 1975.

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. " Alumina Brick" classified under tariff item No. 69022020, SiC Burner Tube, & "Ceramic Roller classified under heading 6903 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 "Alumina Brick & SiC Burner Tube," are correctly classifiable under tariff item 6914900. Thus, I find that in the subject **Bill of Entry No.3630048 dated 16.10.2017** detailed at Sr. No. 01 to 03 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 Bill of Entry is 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 "Ceramic Roller" and classified under tariff item No.69039090 of Customs Tariff Act, 1975, I find that the same are correctly classifiable under tariff item No.69039090 and the exemption under serial No.338 of Notification No. 50/2017-Cus dated 30.06.2017 is available to such goods having description as "Ceramic Roller".

5.3 As regard proposal in the Show Cause Notice for demand of differential Customs duty along with 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 Customs authorities. 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 three Bills of Entry in terms of Section 17 of the Customs Act, 1962, however, I find that in respect of one Bill of Entry No.3630048 dated 16.10.2017 detailed at Sr. No. 01 to 03 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 " Alumina Brick & SiC Burner Tube", 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 said Bill of Entry detailed at Sr. No. 01 to 03 of Annexure-I of the Show Cause Notice, I, therefore, hold that the importer M/s Mahalaxmi International is required to pay the differential Customs duty of **Rs.1,50,328/-[total differential duty for Bill of Entry No. 3630048 dated 16.10.2017 detailed at Sr. No. 01 to 03 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.1,50,328/-** under the provisions of Section 28AA of the Customs Act,1962. Further, in respect of goods viz. "Ceramic Rollers" covered under remaining two Bills of Entry[detailed at Sr. No. 04 to 15 and 16 to 21 respectively of Annexure-I of the SCN], since the same are correctly classifiable under heading 69039090 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.5,14,406/- (Rupees Five Lakh Fourteen Thousand Four Hundred 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. 5,14,406/-** 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. "Alumina Brick, SiC Burner Tube, " but they deliberately assessed the concerned Bill of Entry (mentioned at Sr.No. 01 to 03 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 Mahalaxmi International, Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642.

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. "Alumina Brick, and SiC Burner Tube" under Custom Tariff item 69022020 and 69039090 respectively 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. "Ceramic Roller" under Custom Tariff item 69039090 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 one Bill of Entry No. 3630048 dated 16.10.2017 [as detailed at Sr.No. 01 to 03 in Annexure-I to the Show Cause Notice] and order to re-assess the aforesaid Bill of Entry under Custom Tariff Item 69149000.
- (iii) I confirm and order to recover the differential Customs duty amounting to **Rs.1,50,328.00(Rupees One Lakh Fifty Thousand Three Hundred Twenty Eight only)**[total differential duty in respect of the Bill of Entry No. 3630048 dated 16.10.2017 detailed at Sr. No. 01 to 03 of Annexure-I of the SCN] from the importer M/s Mahalaxmi International (IEC No. 2410004334), Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642, 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.5,14,406/- (Rupees Five Lakh Fourteen Thousand Four Hundred Six only)** [total differential duty in respect of the two Bills of Entry detailed at Sr. No. 04 to 15 and Sr. No. 16 to 21 respectively of Annexure-I of the SCN] from the importer M/s Mahalaxmi International (IEC No. 2410004334), Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642, 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 Mahalaxmi International (IEC No. 2410004334), Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642, 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 Mahalaxmi International (IEC No. 2410004334), Shakti Chambers-2, Shop No.28-29, 8-A, National Highway, Trajpar, Morbi, Gujarat-363642, 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.

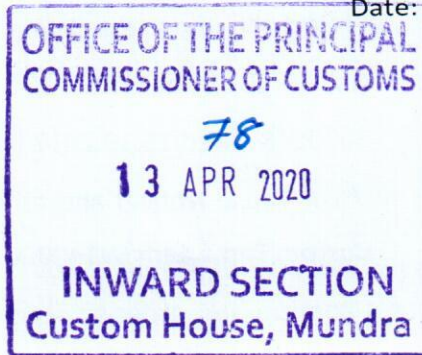
F. No. VIII/48-67/Adj./ADC/MCH/2019-20

Date: 31.03.2020

BY SPEED POST

To

M/s Mahalaxmi International,
Shakti Chambers -2, Shop No.28-29,
8-A, National Highway, Trajpar
Morbi, Gujarat-363642



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