



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/48-108/Adj./Suncity/Gr.V/MCH/2020-21
B. Order-in- Original No.	:	MCH/ADC/AK/18/2020-21
C. Passed by	:	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	:	02.06.2020/02.06.2020
E. Show Cause Notice No. & Date	:	SCN waived as Importer vide letter dated 22.05.2020 sought for waiver of SCN & Personal Hearing
F. Noticee/Party/ Importer	:	M/s Suncity Sheets Pvt. Ltd., 503/2, 518/2, 504,505,520/1, Guntha, Gundala, Gandhidham-Mundra Highway, Mundra(Kachch), Gujarat-370421
G.DIN	:	20200671MO00002J633A

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 रोड, 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/- रुपये 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 सं०-6 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.- Mis-declaration of goods imported under Bill of Entry No.7636762 dated 11.05.2020 by M/s Suncity Sheets Pvt. Ltd., 503/2, 518/2,504,505,520/1, Guntha, Gundala, Gandhidham-Mundra Highway, Kachch, Gujarat-370421

BRIEF FACTS OF THE CASE

M/s Suncity Sheets Pvt Ltd, 503/2,518/2, 504, 505, 520/1 Guntha, Gundala, Gandhidham- Mundra Highway, Kachch, Gujarat – 370421, holding IEC no 1304009815 (hereinafter referred to as “the Importer”) has filed a Bill of Entry No. 7636762 dated 11.05.2020 for clearance of (i) 2 sets of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value USD 39,000/- each set (ii) 2 sets of Electric control Round Steel pipe polishing machine working size 51-133MMT0.3-3.0MM with automatic loading and automatic offloading having assessable value USD 59,000/- each set and (iii) spare parts for BA line (5 sets @600usd/set) and (iv) spare parts for BA line (40 pcs @ 125 usd/set). The said Bill of Entry for item no. (i) & item No. (ii) is filed under EPCG license no 1330006432 dated 13.01.2020. The Bill of Lading No.KMTCJIU0049945 dated 23.04.2020 shows that the Gross Weight of the goods is 26,700.00 Kg and port of loading mentioned is Jiujiang Foshan, China.The invoice No. AIHL/CI/200407 dated 07.04.2020 declares the total value as USD 204,000.00 CIF.

1.1. It appeared that the Bill of Entry is assessed and cargo subjected to 2nd check examination procedure. During the course of examination of the cargo by the Custom Officers, it is observed that there are 03 sets of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading in place of the 2 sets as declared in the Bill of Entry and there is found only 1 set of the Electric control Round Steel pipe polishing machine working size 51-133MMT0.3-3.0MM with automatic loading and automatic offloading in place of the 2 such machines as declared in the Bill of Entry.

1.2. It further appeared that as per EPCG licence No. 1330006432 dated 13.01.2020 following items (as at Sr. No. 2 & 3 of the license) can be imported duty free by the importer under the authorization

S.No.	ITCHS Code	Import Item Name	QTY	UQM
2	84609090	Electric control Round Steel pipe polishing machine working size 12-63MM T:0.3-3.0 MM with automatic loading and automatic off loading	2.0	SET
3	84609090	Electric control Round Steel pipe polishing machine working size 51-133MM T0.3-3.0MM with automatic loading and automatic off loading	2.0	SET

1.3. It appeared from the above license that only 2 sets of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading can be imported duty free. Therefore, it appears that the importer has 1 set of the above machines in excess of the declared and duty free entitled quantity of the goods and therefore on this excess 1 set of the machine totally valued at USD 39,000/-

the importer is liable and required to pay applicable duty (Basic Custom Duty, SWS and IGST) as per Customs Tariff Act,1975.

1.4 It further appears that the importer vide its letter dated 22.05.2020 has stated/ admitted that wrong quantities have been shipped by the supplier and further that they had no objection in paying the applicable duty levied on the excess 1 set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM. It further appears that the Importer has also submitted a revised invoice bearing No. AIHL/CI/200407 dated 07th April 2020. As per revised invoice, value of excess 1 set of machine of working size of 12-63MM is shown as USD 38,000/- whereas the values of the other two similar/identical machines is shown as USD 39000/-.

1.5 On being asked to clarify on the lower price of the excess set of Pipe polishing machine Size 12-63MM T3-0.0 MM as compared to the price of the identical goods in the same invoice, the importer submitted a letter dated 29.05.2020 wherein it has been submitted that the difference in price in revised invoice is due to the discount given by the supplier and that they had no objection to pay the duty on this discounted amount also.

1.6. It appeared from the revised invoice submitted by the importer that there is no mention of any discounts as claimed by the importer in its letter dated 29.05.2020. It further appears from the description/ model no. of the goods found in excess that the same are identical to the other 2 sets whose value has been declared as USD 39000/- per set. It further appears that the contention of the importer regarding discount for only 1 set of the goods, which are found in excess and no such discount for the other 02 identical goods in the same invoice appears unacceptable and the actual transaction value of the goods appears USD 39,000/-. It further appeared that they also imported "spare parts for BA Line" and classified them into CTH 85149000, however, these spare parts are "Radiators for cooling section" and "Graphite Rolls" which have their specific CTH under 85162900 and 85451100 respectively. As per Rule 3(a) of General Rules for the Interpretation of the Schedule, the heading which provides the most specific description shall be preferred to headings providing a more general description. Hence the spare parts are to be classified in their respective CTH in terms of Rule 3(a) *ibid*.

1.7. It appears from the above that the Importer has mis-declared the goods (i.e. one set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value USD 39,000/-) imported vide Bill of Entry no 7636762 dated 11.05.2020 with reference to the quantity, value and duty etc. and failed to observe the conditions of Section 46 (4) of the Customs Act, 1962. Sub- Section (4) of section 46 provides that the importer while presenting a bill of entry shall make and subscribe to a declaration as to truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice or such any other documents relating to imported goods. Further, sub Section (4A) of Section 46 provides that the importer who present a bill of entry shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to

the goods under this act or other laws for the time being in force. The importers while declaring the contents of quantity, description and the accuracy and completeness of information through the invoice, bill of lading, packing list etc (import documents) has not declared the correct information which are required under section 46(4) and 46(4A) of the Act. The above acts of mis-declaration have rendered the goods liable for confiscation under the provisions of section 111(l) & 111(m), of the Customs Act, 1962 and also rendered the importer liable to penal action under Section 112(a) of the Customs Act, 1962.

WAIVER OF SCN & PERSONAL HEARING

2. The importer, M/s Suncity Sheets Pvt Ltd., vide their letter dated 22.05.2020 has submitted that they have no objection to pay duty on that one machine and they do not want any Personal Hearing or Show cause notice in this matter.

DISCUSSION & FINDINGS

3. I have carefully gone through the facts of the case, entire available records & evidences submitted before me. I find that the importer vide their letter dated 22.05.2020 have requested for waiver of the show cause notice and personal hearing in the matter, therefore, I find that the principle of natural justice as provided in section 122 A of the Customs Act, 1962, has been completed. Hence, I proceed to decide the case on the basis of the documentary evidences available on records.

3.1. I find that the importer has filed a Bill of Entry No. 7636762 dated 11.05.2020 for import of different items including 2 sets of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value USD 39,000/- each set whereas on examination, 03 sets of the said machine are found instead of the declared 02 sets so one set of the machine is found in excess of the declared quantity. I find that the excess goods imported vide above mentioned Bill of Entry is mis-declared in terms of Section 46(4) (4A) of the Customs, Act, 1962 and this has made the goods liable for confiscation under the provisions of Section 111(l) of the Customs Act, 1962 which states that any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act shall be liable to confiscation.

3.2. I further find that the revised invoice presented by the importer shows the value of the goods found in excess as USD 38000/- whereas the value of the identical goods is shown as USD 39000/- in the same invoice as well as in the invoice presented/ uploaded at the time of filing of the Bill of Entry for import. I have also gone through the purchase order No. SSPL/Machine/2019-20/07 dated 30.12.2019 presented by the importer and find that the price of the one set of the goods has been shown as USD 39000/- and there is no mention of any discounts in the purchase order as well. Therefore, I find that the contention of the importer regarding lower value of the goods on account of discounts is not tenable and cannot be considered as a trade discount in terms of Customs Valuation Rules, 2007 as

amended time to time. Accordingly, I find that the actual transaction value of the goods is USD 39,000/-, in terms of Section 14 of the Custom Act, 1962 read with Rule 4 of the Customs Valuation Rules, 2007 (as amended time to time). I find that the value of the goods imported vide above mentioned Bill of Entry is mis-declared in terms of Section 46(4) of the Customs, Act, 1962 and this has made the goods also liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 which states that any goods which do not correspond in respect of value or in any other particular with the entry made under this Act shall be liable to confiscation.

3.3 Thus I find that the importer has mis-declared the goods in terms of quantity as well as the value to evade the Customs duty and has imported on set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value USD 39,000/- (Rs.29,91,300/-), by showing the goods to be covered under the EPCG license, with a view to evade the payment of Customs duty. I further hold that excess/undeclared goods i.e. one set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value of USD 39,000/- (Rs.29,91,300/-) are liable for confiscation under Section 111(l), 111(m) of the Customs Act, 1962.

3.4 I further find that they also imported "spare parts for BA Line" and classified them into CTH 85149000, however, these spare parts are "Radiators for cooling section" and "Graphite Rolls" which have their specific CTH under 85162900 and 85451100 respectively. As per Rule 3(a) of General Rules for the Interpretation of the Schedule, the heading which provides the most specific description shall be preferred to headings providing a more general description. Hence the spare parts are to be classified in their respective CTH in terms of Rule 3(a) ibid.

3.5 In view of the above discussion and findings, I find that that the importer has failed to observe the provisions of Section 46(4) of the Customs Act, 1962 on various accounts as mentioned above, and rendered the goods liable for confiscation under the provisions of Section 111(l) & 111 (m) of the Custom Act 1962, and therefore have rendered themselves liable for the penal action under the provisions of Section 112(a) of the Customs Act, 1962 which states that any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act shall be liable to a penalty.

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

ORDER

- a. I reject the value of the goods (1 set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading) found in excess, as mentioned in the revised invoice as produced by the importer, under Rule 12 of the Customs Valuation (Determination of value of the imported Goods) Rules, 2007 and hold that the value of the goods be taken as USD

39,000 for the purpose of assessment in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (As amended time to time).

- b. I order the confiscation of 1 set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value of USD 39,000 (i.e. Rs 29,91,300) under Section 111(l) & 111(m) of the Customs Act, 1962. However, I give the Importer an option to redeem the confiscated goods on payment of redemption fine of Rs. 3,00,000.00 (Rupees Three lakh only) in terms of Section 125 of the Customs Act, 1962.
- c. I also impose a penalty of Rs. 1,50,000.00 (Rupees One Lakh Fifty Thousand only) on the importer M/s Suncity Sheets Pvt Ltd, 503/2, 518/2,504,505, 520/1 Guntha, Gundala, Gandhidham- Mundra Highway, Kachch, Gujarat – 370421 under Section 112(a) of the Customs Act, 1962.
- d. I order that the importer is to pay the appropriate duty on the excess 1 set of Electric control Round Steel pipe polishing machine working size 12-63MMT3-0.0MM with automatic loading and automatic offloading having assessable value of USD 39,000/- (i.e. Rs 29,91,300).
- e. I order to classify the "Spare Parts of BA Line" i.e Radiators for cooling section" and "Graphite Rolls" in their specific CTH under 85162900 and 85451100 respectively under Customs Tariff Act, 1975 as amended time to time with applicable rate of duty.

5. 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.

P.O (ED) / 2

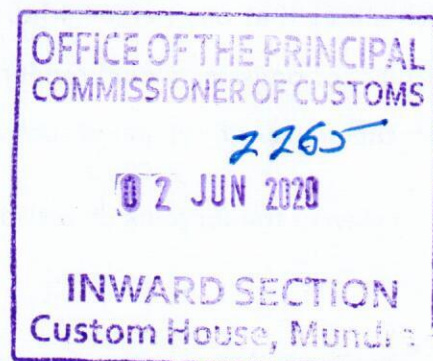
(Ajay Kumar)
Additional Commissioner
Custom House, Mundra.

F. No. VIII/48-108/Adj/Suncity/Gr.V/MCH/20-21

Dated: 02.06.2020

BY SPEED POST/HAND DELIVERY

To,
M/s Suncity Sheets Pvt Ltd.
503/2, 518/2, 504,505, 520/1, Guntha, Gundala,
Gandhidham-Mundra Highway,
Kachch, Gujarat – 370421



Copy to: -

- (1) The Commissioner, Custom House, Mundra.
- (2) The Assistant / Deputy Commissioner (VA), Custom House, Mundra.
- (3) The Assistant / Deputy Commissioner (RRA), Custom House, Mundra.
- (4) The Assistant / Deputy Commissioner (TRC), Custom House, Mundra
- (5) The Assistant / Deputy Commissioner (EDI), Custom House, Mundra
- (6) The Assistant / Deputy Commissioner (Disposal), Custom House, Mundra
- (7) Guard file

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