


# DIN-20200771MO00004CA541

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</b>
A. File No.	: F. No. VIII/48-25/Adj./ADC/MP & SEZ/2015-16
B. Order-in- Original No.	: MCH/ADC/AK/ 26 /2020-21
C. Passed by	: Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	: 13 .07.2020/13.07.2020
E. Show Cause Notice No. & Date	: VIII/48-458/Adj./Misc./Gr.III/Dipen Trading/2015-16 Dated 02.09.2015 (De-novo proceedings in view of Final Order No. A/12653-12664/2018 dated 27.11.2018 passed by CESTAT, Ahmedabad)
F. Noticee(s)/Party/ Importer	: M/s Dipen Trading Company, Anand-Sojitra Road, Opp. New Water Tank, Anand-388001

1. यह अपील आदेश संबंधित 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 7<sup>th</sup> 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 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.:-** Show Cause Notice F. No. VIII/48-458/Misc./Gr.III/Dipen Trading/2015-16 dated 02.09.2015 issued to M/s Dipen Trading Co., Anand-Sojitra Road, Opp. New Water Tank, Anand-388001.



1. The present case is being taken up by me for adjudication in pursuance to the Hon'ble CESTAT, Ahmedabad Final Order No. A/12653-12664/2018 dated 27.11.2018 passed against Order-In-Appeal No. MUN-CUSTOM-000-APP-21-22-17-18 dated 01.05.2017 passed by the Commissioner of Customs (Appeals), Ahmedabad. The Hon'ble Tribunal has allowed the appeal of the importer M/s Dipen Trading Company by way of remand to the assessing authority/adjudicating authority for deciding fresh and for passing a reasoned speaking order on all the issues as discussed in the aforesaid Tribunal Order dated 27.11.2018.

### **BRIEF FACTS OF THE CASE**

2. M/s. Dipen Trading Co., Anand -Sojitra Road, Opp.New Water Tank, Anand -388 001 (IEC No. 3407000901) (herein after referred as the "importer"/"Noticee") had imported Six (6) consignments of 'Used Jute Bags' at Mundra port through their Custom House Agent M/s. N. G. Bhanushali, Gandhidham, classifying the goods under Customs Tariff Heading 63101030 with availing benefit as per Sr. No. 299 of Notification No. 12/2012- Cus. dated 17.03.2012 as amended . Details of Bills of Entry are enclosed as Annexure-'A' to the Show Cause Notice.

2.1 It appeared that the subject imported goods declared as "Used Jute Bags" by the Noticee appropriately merit classification under Tariff Item 63051090 and are chargeable to effective Basic Customs Duty @ 10% & CVD as against the classification of the said goods claimed by them under heading No.63101030 [effective Customs duty @ 5% & NIL CVD] of the Customs Tariff Act,1975.

2.2. In view of the above, it appeared that the total duty payable in respect of the said goods as per details shown in Annexure-'A' of the Show Cause Notice would be Rs. **20,89,933/-** as against Rs. **6,66,741/-** paid by the importer towards duty. Accordingly, the differential Customs duty of Rs. **14,23,192/-** (Rupees Fourteen Lakh Twenty Three Thousand One Hundred Ninety two only) appeared liable to be recovered from the importer under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA(1) ibid.

2.3 It further appeared that the subject goods imported vide six Bills of Entry referred in column (2) of Annexure 'A' of the Show Cause Notice , totally valued at Rs. **71,26,349/-** (Rupees Seventy One Lakh Twenty Six Thousand Three Hundred Forty nine only) are liable for confiscation under Section 111(m) of the Customs Act, 1962. It also appeared that for having rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, the importer is also liable for penalty under Section 112(a) of the Customs Act, 1962.

3. Accordingly, a Show Cause Notice bearing F.No. VIII/48-458/Misc/Gr.III/Dipen Trading/2015-16 dated 02.09.2015 was issued to M/s. Dipen Trading Co., Anand -Sojitra Road, Opp.New Water Tank, Anand 388 001, whereby they were called upon to show cause to the Additional Commissioner of Customs, Custom House, Mundra as to why:-

- i) the classification of the goods imported vide Bills of Entry mentioned in Col. 2 of the Annexure 'A' enclosed with this notice claimed under Tariff Heading 63101030 of the Customs Tariff Act, 1975 should not be rejected and the goods be classified under Tariff Item 63051090 of the Customs Tariff Act, 1975.

- ii) an amount of Rs. **14,23,192/-** (Rupees Fourteen Lakh Twenty Three Thousand One Hundred Ninety two only) as duty short paid in respect of goods imported vide Bills of Entry as referred in col. 2 of Annexure- A enclosed with this notice should not be demanded under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA(1) of the Customs Act, 1962.
- iii) The impugned goods imported under Bills of Entry as referred in col. 2 of Annexure- A enclosed with this notice totally valued at Rs. **71,26,349/-** (Assessable Value) (Rupees Seventy One Lakh Twenty Six Thousand Three Hundred Forty nine only) should not be confiscated under Section 111(m) of the Customs Act, 1962.
- iv) Penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on them.

4. After following due process of law, adjudicating authority i.e. the Joint Commissioner of Customs, Custom House, Mundra vide O-I-O No. MCH/JC/GPM/138/ADJ/2016-17 dated 21.09.2016, rejected the classification of imported goods claimed under Tariff Heading 63101030 of the Customs Tariff Act, 1975 and classified the same under Tariff Item 63051090 of the said Act, 1975, ordered to recover an amount of Rs. **14,23,192/-** (Rupees Fourteen Lakh Twenty Three Thousand One Hundred Ninety two only) as duty short paid in respect of impugned goods under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA(1) of the Customs Act, 1962, refrained from imposing any fine against the impugned goods liable for confiscation valued at Rs.71,26,349/- under Section 111(m) of the Customs Act, 1962 since the same are not available for confiscation, Imposed penalty of Rs.1,42,000/- (Rupees One Lakh Forty Two Thousand only) on the importer under Section 112(a) of Customs Act, 1962.

5. Being aggrieved with the above Order-In-Original dated 21.09.2016 of the Joint Commissioner, M/s Dipen Trading Company, Anand-Sojitra Road, Opp. New Water Tank, Anand-388001 filed an appeal before the Commissioner of Customs (Appeals), Mundra, in terms of Section 128 of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982.

6. The appeal filed by M/s Dipen Trading Company was decided by the Commissioner of Custom (Appeals), Mundra vide Order-In-Appeal No.MUN-CUSTM-000-APP-21 to 22-17-18 dated 01.05.2017 wherein on the basis of his findings he rejected the appeal stating as under-

*"I find that there is no legal infirmity in the impugned order. Therefore, I do not find any justification to interfere with the findings of the authority. In view of the above, I reject the appeal."*

7. Further, being aggrieved with the above Order-In-Appeal dated 01.05.2017, M/s Dipen Trading Company filed an appeal before the Hon'ble Customs, Excise & Service Tax Appellate Tribunal, WZB, Ahmedabad in terms of Section 129 A(1) of the Customs Act, 1962.

8. The Hon'ble CESTAT, Ahmedabad vide Final Order No. A/12653-12664/2018 dated 27.11.2018 have remanded back the matter to the Adjudicating Authority. The order of the CESTAT as in paragraph-5 is reproduced herewith:-

***“Since all the issues involved mixed question of law and fact, we are of the considered view that the matter as a whole should be considered afresh, accordingly, we set aside the impugned order and remand the matter to assessing authority/adjudicating authority for passing a reasoned speaking order on all the issues as discussed above. Appeals are allowed by way of remand to the assessing/adjudicating authority.”***

9. Further, the aforesaid CESTAT's Final order dated 27.11.2018 has been reviewed and accepted by the department on 13.02.2019. Accordingly, the matter is taken up for adjudication.

### **PERSONAL HEARING**

10. M/s Dipen Trading Company, Anand-Sojitra Raod, Opp. New water Tank, Anand, Gujarat-388001 granted personal hearing on 25.06.2020 and the same was communicated to them vide this office letter F.No. VIII/48-81/Adj./ADC/MCH/2019-20 dated 16.06.2020. Shri Ajay Kumar M. Thakker, Proprietor, attended the personal hearing on 25.06.2020 wherein he submitted a letter dated 25.06.2020 and reiterated the submissions made therein. He further stated that he has nothing more to add.

### **DEFENCE SUBMISSION**

11. The Noticee vide their letter dated 25.06.2020, have made submissions, interalia as under-

11.1 They submit that they are engaged in the activity of importing 'used jute bags' since last many years. For the said purpose, they have also obtained necessary license for import of jute bags from the concerned licensing authority who has done so on consideration of the details contained in an application made by them in that regard. In the bills of entry filed by them regarding used jute bags imported from foreign countries, necessary details thereof have been mentioned in the bills of entry wherein they have claimed the classification of the said used jute bags under tariff item No.6310 10 30, as well as, availed benefit of concessional rate of duty under Notification No.12/2012 Cus. dated 17.3.2012.

11.2 They submit that the 'used jute bags' imported by them are cuttings and have a cut /cuts on them. The said goods imported by them are verified and checked by the Customs Authorities and it is only after checking the same, the goods in question were permitted to be cleared on making payment of appropriate customs duty. It is only after this that the bills of entry in question were assessed and payment of customs duty at appropriate leviable rate were made.

11.3 As aforesaid, they have claimed the classification of goods in question under chapter 3 heading No.6310 10 30. The said entry 6310 covers used or new rags, scrap twine, cordage,

rope and cables and worn out articles of twine, cordage, ropes or cables, of textile materials. Tariff item 6310 10 30 covers gunny cuttings. As has been submitted by them hereinabove, the goods in question imported by them are undoubtedly used jute bags with regard to which we have also obtained a license from jute commissioner, the classification of goods in question claimed by us is under tariff item 6310 which covers used and worn out articles of textile materials. Apropos this, articles of jute are undoubtedly textile materials and the same being used and worn out articles are appropriately classifiable under tariff item 6310 10 30 which covers gunny cuttings. They have, therefore, correctly classified out goods under the said tariff item. The invocation of general rules for interpretation of the import tariff in para 6 of the subject show cause notice is totally misplaced in the present case, inasmuch as, the said rule would be applicable only in cases where there is confusion as regards classification of goods and / or any goods merit classification under two different entries. In a case where there is a specific entry covering the goods, there arises no reason to look into the rules of interpretation.

11.4 In the present case, admittedly, the goods in question are used which are specifically covered under tariff item 6310. The classification of goods in question sought for in the subject show cause notice under tariff No.6305 is totally misplaced especially in view of the fact that the said entry does not cover used goods. Thus, when used goods are specifically covered under tariff item 6310, as aforesaid, there is no merit in the contention of the department as regards classification of goods. In fact, for import of goods covered under tariff item No.6310, there is requirement of an importer procuring authorization / license, which we have in fact done.

11.5 Thus, the classification sought for by them having been made correctly, there arises no question of re-classification of goods, confiscation of goods, recovery of any differential duty or imposition of any penalty on them. In view of this, the subject show cause notice is not sustainable and deserves to be dropped in the Interest of justice.

11.6 In addition to the above, they submit that it is a settled legal position that the classification of goods is a matter relating to chargeability and the onus of establishing that certain goods can be classified and duty thereon can be levied under a particular tariff item is entirely on the department. If the department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the department has to adduce proper evidence as discharge the burden of proof. In this regard, reliance is placed on decisions of Hon'ble Supreme Court delivered in the cases of (1) HPL Chemicals Limited v/s Commissioner of Central Excise, Chandigarh reported in 2006 (197) ELT 324 (SC) and (ii) Hindustan Ferodo Limited v/s Collector of Central Excise, Bombay reported in 1997 (89) ELT 16 (SC). Apropos this, in the present case, **no such onus has been discharged by the department**. Therefore, in such circumstances, there arises no question of reclassification of goods, without any evidence contrary thereof.

11.7 In addition to this, even assuming that the department has discharged the said onus, then in that eventuality also, they humbly submit that the goods in question ought not to be re-classified, as proposed in the subject show cause notice, in as much as, it is a settled position of

law that in case of classification, when two opinions are possible, then in that eventuality, the assessee should be given benefit of doubt and the opinion favorable to the assessee should be given effect to. In this regard, reliance is placed on decision of Hon'ble Supreme Court delivered in the case of *Poulouse and Mathen v/s Commissioner of Central Excise reported in 1997 (90) ELT 264 (SC)*. In light of the aforesaid, they submit that in the present case, the classification made by them under chapter heading 6310 should be treated as correct and the same should not be re-classified under chapter heading 6305 10 30.

11.8 They submit that even assuming without admitting the goods in question is to be reclassified under chapter heading 6305 10 30, then in that eventuality also, there arises no question of payment of additional duty of customs @ 12.5% on the goods in question. They submit that as per provisions of Section 3(1) of Customs Tariff Act, 1985, the additional duty leviable upon any article would be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. Meaning thereby, the excise duty has to be considered before levying additional duty upon any article. As against this, in the present case, **no excise duty is payable**. They submit that, in terms of Notification No.30/2004-C.E. dated 09.07.2004 read with Notification No.12/2011-C.E, dated 01.03.2011 and Notification No.11/2013-C.E. dated 01.03.2013, in exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944, read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, the Central Government, being satisfied that it is necessary in the public interest so to do, has exempted the excisable goods mentioned therein from whole of the duty of excise leviable thereon under the said Central Excise Act. The said Notification, at **Sr. No.16**, covers the goods falling under **chapter heading 63**. Thus, once no excise duty is leviable on such products i.e. goods falling under chapter heading 63, there arises no question of payment of additional duty of customs, much less @ 12.5%, as proposed by the department in the subject show cause notice and therefore, to that extent, the subject show cause notice deserves to be dropped. In this regard, reliance is placed on a judgment dated 27-28/11/2014 of Hon'ble High Court rendered in the case of ***Roxul Rockwool Insulation India Pvt. Ltd. Vs. Union of India being SCA No.8869 of 2014*** (also reported in 2014 TIOL 2123 HC AHM CUS). For ready reference, relevant extract thereof is reproduced hereinbelow:

"18. . . . . By reference, therefore, the charging Section 3(1) of the Customs Tariff Act and such CVD would be leviable as if the goods cleared by SEZ unit to the DTA are in the nature of imports. notification the whole of the excise duty payable as prescribed in the Central Excise Tariff Act is exempt for the local manufacturers, no CVD would be payable under Section 3(1) of the Customs Tariff Act on import of such goods. Section 3(1) uses the expression 'excise duty for the time being leviable on a like article if produced or manufactured in India'. The explanation explains the expression 'excise duty for the time being leviable on a like article if produced or manufactured in India' as to include the duty, which would be leviable on class or description of articles to which the imported

article belongs, if such article is not produced or manufactured in India. However, the central concept remains the same, namely, the importer would have to pay CVD equivalent of the excise duty payable on a like article if produced or manufactured in India. In the therefore, by virtue of an exemption present case, by virtue of the exemption notifications on a like article produced or manufactured in India there is no duty of excise payable or leviable is leviable. In other words, excise duty levied on such articles manufactured in India being nil, the CVD also, in terms of Section 3(1) of the Customs Tariff Act, would be nil."

11.9 In view of the above, as in the present case also, in view of the aforesaid Notifications, there is an exemption on payment of Excise duty for goods falling under both the chapter heading i.e. 6305 and 6310, there arises no question of recovering any amount towards CVD, for the goods in question. Therefore, to the said extent, the subject show cause notice deserves to be quashed and set aside.

### **DISCUSSION AND FINDINGS**

12. I have carefully gone through the entire records of the case including the Show Cause Notice dated 02.09.2015, defence submissions dated 25.06.2020 filed by the Noticee, oral submissions made at the time of personal hearing, letter dated 29.06.2020 of the Deputy Commissioner(Gr.III), Custom House, Mundra and directions given by the Hon'ble CESTAT, Ahmedabad. I find that the Hon'ble Tribunal has directed to consider the whole case matter afresh and for passing a reasoned speaking order on all the issues as discussed in this Tribunal Order. I, therefore, proceed to implement the order of the Tribunal, Ahmedabad.

12.1 I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided:

- (i) Correct classification of the goods imported by the noticee by declaring the same as "Used Jute Bags" and classified under CTH 63101030 of the first schedule to the Customs Tariff Act, 1975.
- (ii) Whether the declared goods viz. Used Jute Bags", imported under Bills of Entry as referred in col.2 of Annexure -A enclosed with the Show Cause Notice, totally valued at Rs. 71,26,349/- (Rupees Seventy One Lakh Twenty Six Thousand Three Hundred Forty Nine only), are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.
- (iii) Whether, the differential Customs duty amounting to Rs.14,23,192/- (Rupees Fourteen Lakh Twenty Three Thousand One Hundred Ninety Two only ) is required to be demanded and recovered from the importer under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA(1) of the Customs Act, 1962.
- (iv) Whether the importer is liable for penalty under the provisions of Section 112 (a) of the Customs Act,1962.



12.2 The foremost issue before me to decide in this case is as to whether the goods imported by the noticee as "Used Jute Bags" would be classifiable under CTH 63101030 or it would be classifiable under CTH 63051090 of Customs Tariff Act, 1975 as claimed by the department in the show cause notice. Before I proceed to evaluate the stand of the importer, it is highly required to discuss the length and breadth of the relevant tariff entries that have been declared by the importer (CTH 63101030) as well as claimed by the department (CTH 63051090).

12.2.1 The relevant portion of chapter heading 6310 of Customs Tariff Act, 1975 reads as under-

**6310- USED OR NEW RAGS, SCRAP TWINE, CORDAGE, ROPE AND CABLES AND WORN OUT ARTICLES OF TWINE, CORDAGE, ROPE OR CABLES, OF TEXTILE MATERIALS**

Tariff Item	Item Description	Unit	Basic	Effective	PRE.	ACD	CVD	Policy
631010	Sorted	--	--	--	--	--	--	--
63101010	Woolen rags	kg.	10.00	5.00	--	4	--	Restricted
63101020	Cotton rags	kg.	10.00	5.00	--	4	--	Restricted
<b>63101030</b>	<b>Gunny cuttings</b>	<b>Kg.</b>	<b>10.00</b>	<b>5.00</b>	--	<b>4</b>	--	<b>Restricted</b>

In view of the above, I find that heading 6310 is meant for the classification of --"Used or new rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials". Thus an article of textile material that may be either used, new or worn out, all covers under heading 6310. The Tariff item 63101030 covers "Gunny Cuttings", an article made commonly from jute is a strong, coarse material.

12.2.2 Further, in regard to department's claim that the imported goods viz. "Used Jute Bags" is appropriately classifiable under CTH 63051090, I also refer the said Chapter heading 6305 of Customs Tariff Act, 1975. The relevant portion of heading 6305 of Customs Tariff Act, 1975 reads as under-

**6305-SACKS AND BAGS, OF A KIND USED FOR THE PACKING OF GOODS**

Tariff Item	Item Description	Unit	Basic	Effective	PRE.	ACD	CVD	Policy
<b>630510</b>	<b>Of jute or of other textile bast fibres of heading 53.03</b>	--	--	--	--	--	--	--
63051010	Jute bagging for raw cotton	kg.	10.00	10.00	--	4	12.5	Free
63051020	Jute corn(grains) sacks	kg.	10.00	10.00	--	4	12.5	Free
63051030	Jute hessian bags	Kg.	10.00	10.00	--	4	12.5	Free
63051040	Jute sacking bags	Kg.	10.00	10.00	--	4	12.5	Free
63051050	Jute wool sacks	Kg.	10.00	10.00	--	4	12.5	Free
63051060	Plastic coated or paper cum	Kg.	10.00	10.00	--	4	12.5	Free

	polythene lined jute bags and sacks							
63051070	Paper laminated hessian jute	Kg.	10.00	10.00	--	4	12.5	Free
63051080	Jute soil savers	Kg.	10.00	10.00	--	4	12.5	Free
<b>63051090</b>	<b>Other</b>	<b>Kg.</b>	<b>10.00</b>	<b>10.00</b>	<b>--</b>	<b>4</b>	<b>12.5</b>	<b>Free</b>

As per the said Tariff Act, Chapter sub-Heading 630510 covers the goods –“Sacks and Bags, of a kind used for the packing of goods, of jute or of other textile bast fibres of heading 5303. I find that the Chapter heading 5303 covers the goods viz. Jute and other textile bast fibres excluding flax,(true hemp and ramie), raw or processed but not spun, two and waste and these fibres (including yarn waste and garnetted stock). Thus, I find that the “Jute Bags” are very well covered under chapter sub-heading 630510 of Customs Tariff Act,1975.

12.3 I further find that classification of imported goods under the Customs Tariff Act, 1975 is governed by the General Rules for the interpretation of the Import Tariff (**GRI, for short**). I have gone through the General Rules of Interpretation. It is the GRIs that are the single set of legal principles that always govern the classification of merchandise under the Harmonized System. There are six General Rules used in interpreting (applying) the Tariff. Rules 1 to 4 are related and must be applied in sequence. Rules 5 and 6 stand on their own to be applied as needed.

I find that Rule 1 states that the titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:[ that is GIRs 2 to 6].

I find that Rule 2(a) deals with the classification of incomplete, unfinished, unassembled or disassembled articles. Unfinished and incomplete articles can be classified under the same Heading as the same articles in a finished state provided that they have the essential character of the complete or finished article. As well, unassembled or disassembled goods may also be classified the same as the complete finished product. The Rule 2(b) lays the groundwork for dealing with products, not classifiable through the use of Rule 1 or 2(a), which are composed of a mixtures or combination of that materials or substances with other materials or substances. Similarly, a reference to a product composed of a given material or substance includes products composed either wholly or partly of the material or substance. This means that a mixed product may seem to be eligible for classification under two or more headings. Principles of Rule 3 are used to decide the classification of goods, prima facie, classifiable under two or more headings.

**I find that Rule 3(a) states that where two or more headings seem to apply, the one which provides the most specific description of the product in question should be used. This means that a heading which names the actual product should be used in preference to one**

which only names a category to which the product could belong. Similarly, a Heading that describes the whole product should be used in preference to one which describes part of it. However, where two headings, both only describe part of the product, this rule can not be used to tell which are to use even if one seems more specific or detailed than the other. I further find that Rule 3(b) provides that Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by use of the previous Rule 3(a), should be classified as if they consisted of the material or component which gives them their essential character. I further find that Rule 3(c) provides that when the goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order.


Further, as per Rule 4, the goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

Rule 5 specifies that in addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

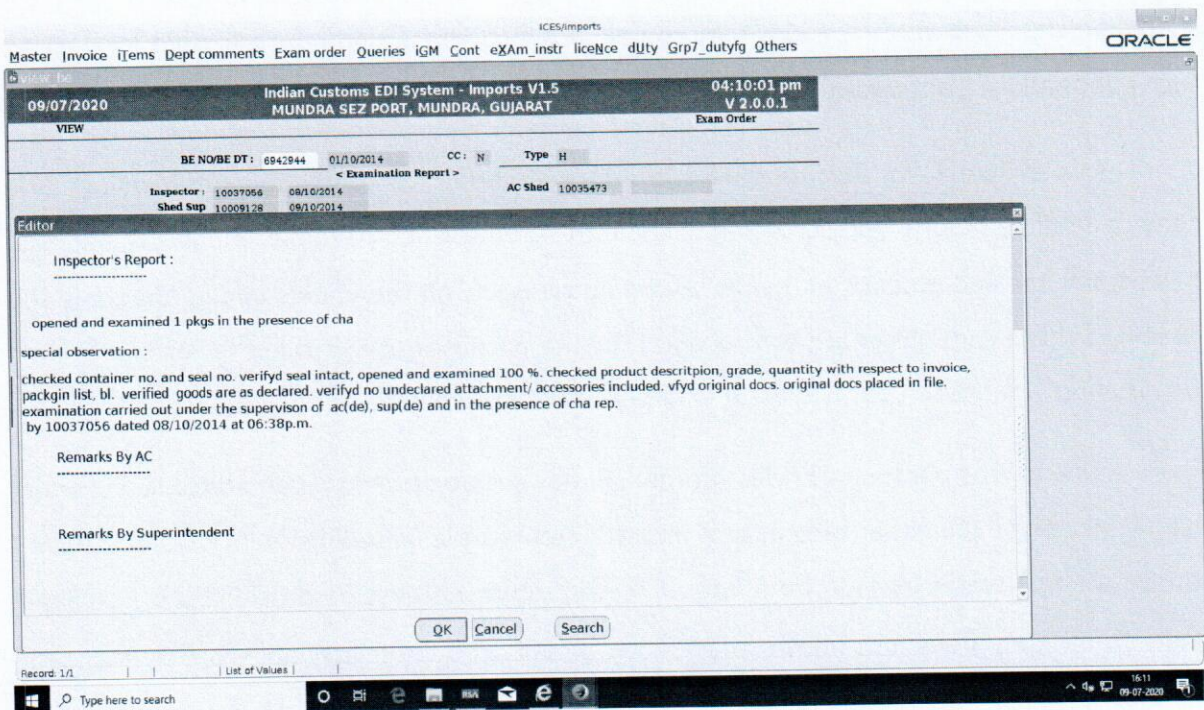
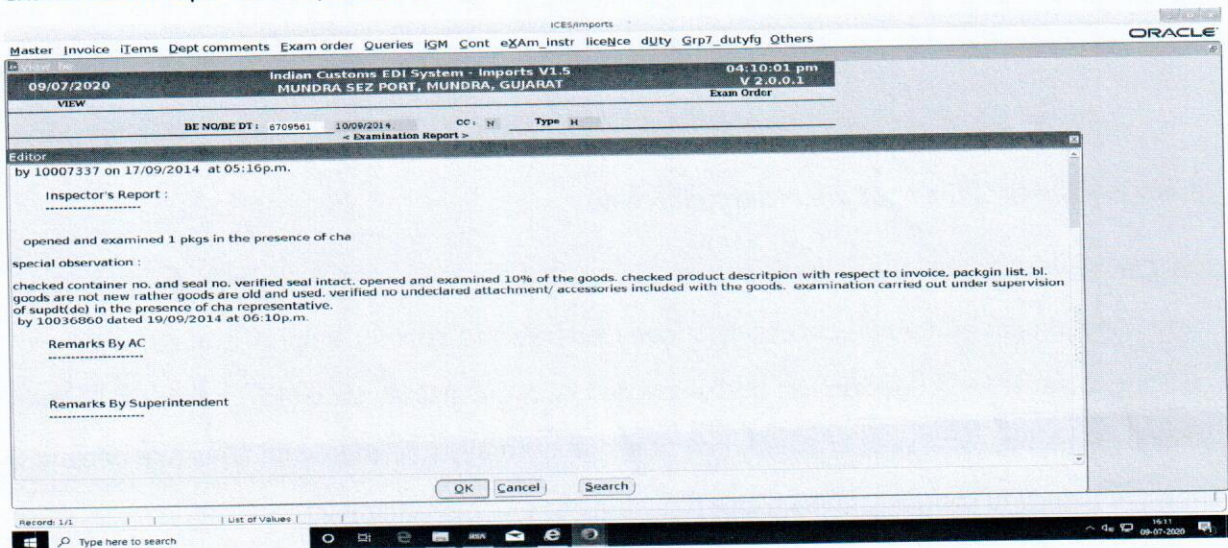
Rule 5(b) deals with other types of packing materials and packing containers. These should be classified with the goods they contain if they are of a kind normally used for packing such goods and are not clearly suitable for repetitive use.

As per Rule 6, for legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

I find that as per the tariff classification, it may not be denied that an article falling under Chapter Heading 6310 either used or new all made from textile material also includes an article "Gunny Cuttings" which is made from jute. However, simply because an article "Used Jute Bags" made from jute, does not mean that same would also be classifiable under the tariff classification meant for another item of jute i.e. "Gunny Cutting", a distinct product for the purpose of said chapter heading of Customs Tariff Act, 1975. Moreover, a given product can legally only be classified under one Heading. In this case, the items viz. "Jute Bags" are clearly specified in the Chapter sub-heading 630510 itself, thus, I am of the view that General 

Interpretative Rule 3(a) is applicable to the present case which states that most specific description shall be preferred to headings providing a more general description and classification is required to be determined accordingly. In these circumstances, by following the above discussed Rule 3(a) of the General Rules for Interpretation of first schedule of Import Tariff, I find that in the present case the goods in question viz. "Old Jute bags" merit classification only under Chapter heading 63051090 of Customs Tariff Act, 1975.

12.4 I have also gone through the declaration/description of the importers on the face of the Bills of Entry & invoices and Examination reports in respect of concerned Six Bills of entry as referred in Col.2 of the Annexure-'A' of the show Cause Notice. The declaration/description of the importers on the face of the Bills of Entry & Invoices are "Used Jute Bags" and not "Gunny Cuttings" as specified under CTH 63101030. Further the goods were examined and said examination report in respect of the Six Bills of Entry covered under the SCN are as under-



Master Invoice Items Dept comments Exam order Queries IGM Cont eXAm\_instr liceNce dUty Grp7\_dutyfg Others

Indian Customs EDI System - Imports V1.5  
MUNDRA SEZ PORT, MUNDRA, GUJARAT

09/07/2020 04:10:01 pm  
V 2.0.0.1

VIEW Exam Order

BE NO/BE DT: 6181026 03/02/2015 CC: N Type: H  
< Examination Report >

Editor

opened and examined 3 pkgs in the presence of cha

special observation :

checked container nos. and seal nos. verified seal intact. opened and examined 10% under supervision of the dc(de) and the supdt docks in presence of cb. checked product description, and quantity with respect to invoice, packgin list, bl, coo is not placed in file. verified goods are used jute bags. verified no undeclared attachment/ accessories included. followed rms instructions. vfyd all import docs.

Remarks By AC

examine under a.c/d.c supervision by 10033851 on 03/02/2015 at 01:46p.m.

Remarks By Superintendent

chalan no 2010809838 dated 05.02.2015 for rs 67119/- by 10009128 dated 05/02/2015 at 03:20p.m.

OK Cancel Search

Record: 1/1 List of Values

Type here to search

1612 09-07-2020

Master Invoice Items Dept comments Exam order Queries IGM Cont eXAm\_instr liceNce dUty Grp7\_dutyfg Others

Indian Customs EDI System - Imports V1.5  
MUNDRA SEZ PORT, MUNDRA, GUJARAT

09/07/2020 04:10:01 pm  
V 2.0.0.1

VIEW Exam Order

BE NO/BE DT: 6598441 14/03/2015 CC: N Type: H  
< Examination Report >

Editor

Inspector's Report :

opened and examined 5 pkgs in the presence of cha

special observation :

checked container no. and seal no. verified seal intact. opened and examined 10% under supervision of supdt docks and in pre of cb rep. verified product description, weight and quantity with respect to invoice, packing list, bl. verified goods are used jute bags.

Remarks By AC

Remarks By Superintendent

challan no 201115910 date 19.03.2015 by 10001264 dated 19/03/2015 at 05:36p.m.

OK Cancel Search

Record: 1/1 List of Values

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1612 09-07-2020

Master Invoice Items Dept comments Exam order Queries IGM Cont eXAm\_instr liceNce dUty Grp7\_dutyfg Others

Indian Customs EDI System - Imports V1.5  
MUNDRA SEZ PORT, MUNDRA, GUJARAT

09/07/2020 04:10:01 pm  
V 2.0.0.1

VIEW Exam Order

BE NO/BE DT: 6829576 06/04/2015 CC: N Type: H  
< Examination Report >

Editor

invoice, packing list, bl. verify coo, verify goods are used jute bags. follow rms instructions as applicable. vfy and deface original docs. by 10034217 on 07/04/2015 at 12:19p.m.

Inspector's Report :

opened and examined 8 pkgs in the presence of cha

special observation :

checked container no. and seal no. verified seal intact. opened and examined the goods 10% under supervision of supdt docks in presence of cb's rep. verified product description, weight and quantity with respect to invoice, packing list, bl. verified goods are used jute bags.

Remarks By AC

Remarks By Superintendent

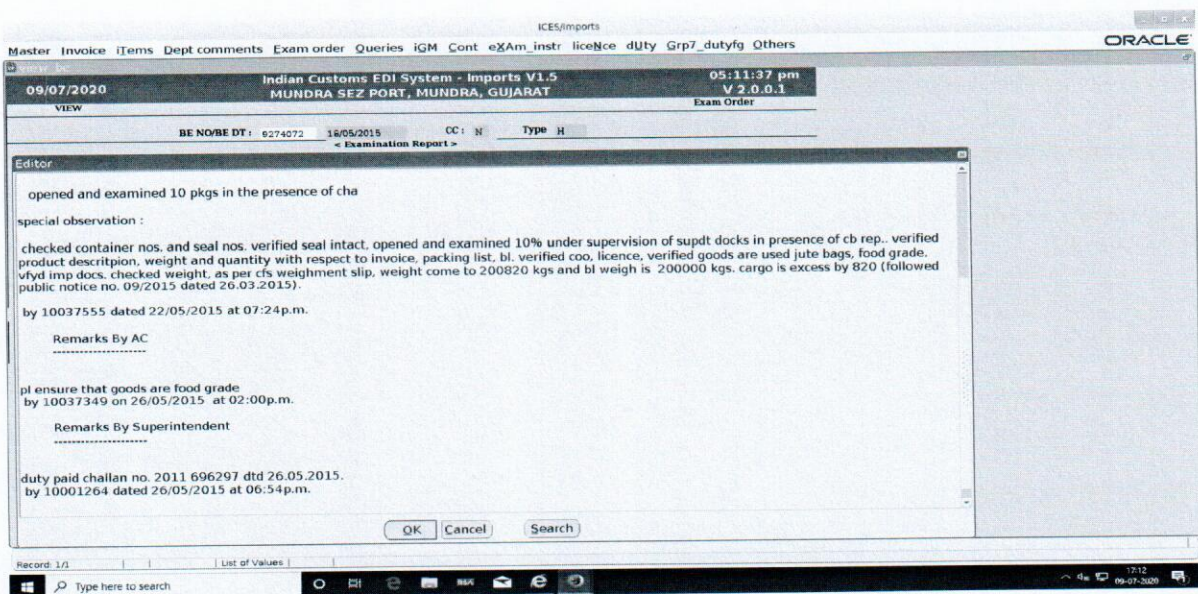
duty paid vide challan no. 2011 348132 dated 13.04.2015 for rs. 181559/- by 10007337 dated 13/04/2015 at 06:53p.m.

OK Cancel Search

Record: 1/1 List of Values

Type here to search


1612 09-07-2020



In view of the above declaration/description on the face of bills of Entry & Invoices and examination reports, I find that during the course of examination of the imported goods, the goods have been found as **“Used Jute Bags”** as declared in the subject Bills of Entry filed with the department. I find that the examination reports of concerned Customs Officers **clearly mention that verified goods are as declared “Used Jute Bags”**. Moreover, the Noticee in all the Bills of Entry have also declared the description of their imported goods as **“Used Jute Bags”**. Therefore, the contention of the noticee in their defence reply, even at this de-novo adjudication stage, that the impugned goods imported by them are “cuttings” and have a cut/cuts on them that too without the support of any evidence is misleading and not sustainable as far as actual facts in respect of imported goods are concerned. Also the said importer has not brought any evidence on record to prove the classification that has been claimed by them in order to avail the benefit of Sr. No. 299 of Notification No.12/2012-Cus. dated 17.03.2012 in view of the settled law that onus to prove always lies on the shoulder of beneficiary. Therefore, as per the goods declared by the said importer in the subject Bills of Entry and subsequently the aforesaid examination report of the Customs Officers on physical verification of the impugned goods, I find that imported goods viz. **“Used Jute Bags”** are appropriately classifiable under Chapter Heading 630510 since the same is very specifically mentioned therein. I further find that their contention that CTH 630510 covers only Fresh and New Jute bags, is appeared to be wrong as there is no separate headings in Customs Tariff Act, which classify the products as “New” or “Old”. All CTHs are covered New/Old articles. Although there are some CTH, where in Scrap/cuttings etc. are being classified. Hence, on the basis of aforesaid discussions also, the impugned goods would be classified under CTH 63051090 and not under CTH 63101030 as claimed by the importer & consequently the classification of the imported goods viz. **“Used Jute Bags”** under Chapter Sub Heading 63101030 is liable for rejection.

12.5 After deciding appropriate classification, I proceed further to decide the issue of confiscation of the imported goods viz. **“Used Jute Bags”**, valued at Rs.71,26,349/- under the provisions of Section 111(m) of the Customs Act, 1962.

In the present case, the said importer has classified the goods imported by them under CTH 63101030 instead of correct classification under CTH 63051090 in order to claim the benefit of concessional rate of duty under Sr. No. 299 of Notification No.12/2012-Cus. dated 17.03.2012. Thus, I find that the said imported goods, totally valued at Rs.71,26,349/- are liable to confiscation under Section 111(m) of the Customs Act, 1962. However, since the impugned goods are not physically available for confiscation, as the same have already been cleared, I do not hold to impose redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation under Section 111(m) of the Customs Act, 1962.

12.6 There is proposal in SCN regarding demand of differential Customs duty under Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AA(1) of the Customs Act, 1962. I find that the Noticee in their defence reply have contended that they have mentioned all the necessary details in the Bills of Entry required to avail benefit of concessional rate of Customs duty under Notification No. 12/2012-Cus. dated 17.03.2012. They have further contended that after due verification of all said goods and assessment of Bills of Entry by the Customs Authorities, they paid appropriate amount of Customs duty by availing concessional rate of Custom duty based under Notification No. 12/2012-Cus. dated 17.03.2012. However, I find that with the introduction of self-assessment and consequent upon amendments to Section 17, since 8<sup>th</sup> April, 2011, it is the responsibility of the importer to declare the correct description, classification, 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 classification of imported goods and duty payable. I find that the Noticee have self-assessed the said six Bills of Entry in terms of Section 17 of the Customs Act, 1962, however, I find that in respect of said six Bills of Entry covering the imported goods as "Used Jute Bags" detailed in Annexure-A of the Show Cause Notice, the Noticee have availed a wrong Customs duty benefit in terms of Sr. No. 299 of Notification No. 12/2012-customs dated 17.03.2012 while filing the declaration at the time of importation of the imported goods, it is not a relevant fact that the goods were assessed by the assessing officer. 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 or 18 *ibid* 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. As discussed in the preceding paragraph, I have already held that the subject goods i.e. "Used Jute Bags" are correctly classifiable under Tariff item 63051090 and as a consequence, the said noticee is not eligible to avail the benefit of concessional rate of duty in terms of Sr. No. 299 of Notification No. 12/2012-customs dated 17.03.2012. The goods covered under CTH 63051090 attract effective Basic Customs duty @ 10%, therefore, the total duty payable in respect of the impugned goods as per details shown in Annexure-A of the SCN is Rs.20,89,933/- (Rupees  Twenty Lakh Eighty Nine Thousand Nine Hundred Thirty Three only) . However, I find from the records that the importer has already paid duty of **Rs. 6,66,741/-** at the time of clearance of

goods, thus, I hold that the Noticee is liable to pay the differential duty of Rs.14,23,192/- and the same is required to be recovered from them under the provisions of Section 28(1) of the Customs Act,1962 along with applicable interest thereupon under the provisions of Section 28 AA(1) of the Customs Act, 1962.

12.7 Further, I consider the proposal of imposition of penalty on the importer under the provisions of Section 112(a) of the Customs Act, 1962. I find that once the goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962, the person who in relation to such goods have done an act which has rendered goods liable for confiscation is liable for penalty under Section 112(a) of the Customs Act, 1962. In the instant case, the said importer is responsible for the mis-classification of the imported goods "Used Jute bags" under CTH 63101030 which have been held liable for confiscation, therefore, the importer is liable to penalty under Section 112(a) of the Customs Act,1962.

12.8 I find that the Noticee in their written defence submissions have placed reliance on various case laws/judgements in support of their contention on some issues raised in the SCN. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Those decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar[2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

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

#### **ORDER**

- (i) I reject classification of the goods imported vide Bills of Entry mentioned in Col.2 of the Annexure-'A' enclosed with the SCN, claimed under tariff item 63101030 of the Customs Tariff Act, 1975 and order to classify the same under tariff item 63051090 of the said Act..



- (ii) I order the confiscation of the goods viz. "Used Jute Bags", imported under Bills of Entry as referred in Col.2 of Annexure-'A' enclosed with the SCN, totally valued at Rs. 71,26,349/-, under the provisions of Section 111(m) of the Customs Act, 1962. Since, the impugned goods are not physically available for confiscation; I refrain from imposing any redemption fine in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (iii) I confirm the demand of differential customs duty of **Rs.14,23,192/- (Rupees Fourteen Lakh Twenty Three Thousand One Hundred Ninety Two Only)**, in respect of the goods imported vide Bills of Entry as referred in Col.2 of the Annexure-'A' enclosed with the SCN and further order to recover the same from the importer under the provisions of Section 28(1) of the Customs Act, 1962
- (iv) I order to charge and recover interest from the importer M/s. Dipen Trading Co., Anand -Sojitra Road, Opp.New Water Tank, Anand -388 001 on the differential duty of Rs. 14,23,192/- at Sr. No. (iii) above under the provisions of Section 28AA(1) of the Customs Act, 1962
- (v) I impose a penalty of Rs.1,43,000.00(Rupees One Lakh Forty Three Thousand only) on the importer M/s. Dipen Trading Co., Anand -Sojitra Road, Opp.New Water Tank, Anand -388 001 under Section 112(a) of Customs Act, 1962.

14. This order is issued without prejudice to any other action that may be taken under the 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/48-25/Adj/ADC/MP & SEZ/2015-16

Dated: 13.07.2020

BY SPEED POST/E-Mail

To,

M/s. Dipen Trading Co.,  
Anand -Sojitra Road,  
Opp.New Water Tank,  
Anand -388 001(Gujarat)



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. Guard File.

  
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PO(EDI)

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