



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.	:	VIII/48-347/Gr.IV/MCH/2020-21
B. Order-in- Original No.	:	MCH/ADC/AK/29/2020-21
C. Passed by	:	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	:	20.07.2020/20.07.2020
E. Show Cause Notice No. & Date	:	SCN waived vide importers letter dated 15.07.2020
F. Noticee(s) /Party/ Importer	:	M/s Jain Metal Rolling Mills, Unit-II, Plot No. R1/R2, PapankullamVillage, Sipcot Industrial Complex,Gummidipoondi-601201, Tamilnadu
G. DIN	:	20200771MO00004P1D55

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 12 8 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

7वीं 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 इयूटि/ 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.:- Import of “Lead Scrap Relay” vide manual Bill of Entry No. 112370 dated 16.06.2020 filed by the importer M/s Jain Metal Rolling Mills, Unit-II, Plot No. R1/R2, PapankullamVillage, Sipcot Industrial Complex, Gummidipoondi-601201, Tamilnadu.

BRIEF FACTS OF THE CASE

M/s Jain Metal Rolling Mills, Unit-II, Plot No. R1/R2, Papankullam Village, Sipcot Industrial Complex, Gummidipoondi-601201, Tamilnadu having IEC No.0488048397 (herein after referred to as the "Importer") filed a Manual Bill of Entry NO. 112370 dated 16.06.2020 through their Custom House Agent SMG ICB Logistics for clearance of 26.580 MT of "Lead Scrap Relay" under CTH 78020090 having value of Rs. 29,64,951/-(Assessable value) imported vide Bill of Lading No. KNA/CHEN/1035929 dated 31.05.2019 and Invoice No. 4023123 dated 24.05.2019.

1.1 The examination of the imported cargo was carried out, wherein it was noticed that the total weight of the cargo was found 26460 Kg. as against declared weight of 26580 kg. in the aforesaid Bill of Entry.

1.2 Further, to verify the description of the goods, two (02) samples were drawn and forwarded to CRCL, Kandla vide TM No. IMP/AP&SEZ/2352/2020-21 & IMP/AP&SEZ/2353/2020-21 both dated 23.06.2020.

The Test Report in the matter vide Lab No. 997 dated 24.06.2020 in respect of TM No. IMP/AP&SEZ/2352/2020-21 states as follows:

Lead Content (% by weight) = 42.7

Galvanised copper wire (% by weight) = 11.7

Armouring made of magnetic steel (% by weight) = 31.6

Insulating material (Jute, Paper, Cotton fabric, rubber and adheasives) = Balance

It has the characteristics of armoured covered cable.

It is other than Lead scrap (Relay) as per ISRI 2020.

Further, the Test Report in the matter vide Lab No. 996 dated 24.06.2020 in respect of TM No. IMP/AP&SEZ/2353/2020-21 states as follows:

Lead Content (% by weight) = 49.7

Armouring made of magnetic steel (% by weight) = 20.3

Insulating material (Jute, Paper, Polyester fabric, PVC & adheasives) = Balance

It has the characteristics of armoured covered cable.

It is other than Lead scrap (Relay) as per ISRI 2020.

In view of the above, it appears that the importer has mis-declared the description of the imported goods.

1.3 Further, as per examination report, quantity of Lead scrap found is 17970 kg and that of copper wire scrap is 8530 kg, Also, the Chartered Engineer, vide its report reference No. ELBI/Mundra/19/07/05 dated 08.07.2020 has reported that the cargo is totally and extensively damaged and defective armoured cables of assorted sizes and lengths having cuts/knots/twists/breaks at number of places. The cargo being damaged and defective cannot be serviceable for conversion or for re-use/for any other purpose/application & as such having no use other than scrap, that the cargo is discarded, non-serviceable and is fit only for melting purpose.

The weight of individual items calculated on the basis of Test Reports is in below table:

Item	Total weight (Kg)	Lead Content (Kg)	Copper Content (Kg)	Magnetic Content (Kg)	Steel	Insulating material (Kg)
Wire	17970	7673.19	2102.49		5678.52	2515.8
Copper	8530	4239.41	0		1731.59	2559

The details of the imported materials as per laboratory reports, their assessable value & duty involved thereon, on the basis of LME and contemporary data, comes to Rs. Rs.23,18,733/- and Rs.5,67,857/- respectively as under-

Statement for assessable value and duty for the imported goods					
Materials contents	Weight	LME & Contemporary Price in USD	Exchange rate	Total	Duty
Copper	2.102	4748	76.45	762994	186857
Lead	11.913	1497	76.45	1363391	333894
Magnesium	7.4	340	76.45	192348	47106
Insulating material	5.085	0	0	0	0
Total	26.5			2318733	567857

1.4 Further from the Test Reports, It appears that the goods are "Other than Relay scrap" as declared by them. From the declared classification in the bill of entry, they classified their products under Customs Tariff Heading No. 78020090, which is "Restricted" as per Import Export Policy. As the goods are restricted under Foreign Trade Policy and require a specific license for the clearance, which they do not have, hence the goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. Thus, the said importer also liable for penal action under the provisions of Section 112(a) ibid. Further, it appears from the above that the importer has mis-declared the goods imported vide Manual Bill of Entry No. 112370 dated 16.06.2020 with reference to description, quantity, value and duty and their importability under Import Export Policy 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 presents 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 importer 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) is not declared the correct particulars which are required under Section 46(4) and 46(4A) of the Customs Act, 1962. The importer has failed to observe the conditions of Sections 46(4) and 46(4A) of the Customs Act, 1962 and such acts of mis-declaration have rendered the goods liable for confiscation under the provisions of Section 111 (l) & 111(m) of the Custom Act 1962. Further, the importers, by their act of omission and commission are also liable to penal action under Section-112 of the Customs Act, 1962.

WAIVER OF SCN & PERSONAL HEARING

2. The importer vide their one line letter dated 15.07.2020 requested for waiver of the Show Cause Notice and Personal Hearing and to decide the matter on merit.

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 15.07.2020 have opted for waiver of the Show Cause Notice and Personal Hearing in the matter, therefore, I find that they have nothing to represent/say for violation of the provisions of Customs Act, 1962 and Import Export Policy, hence I find that the principle of natural justice, as provided in Section 122A of the Customs Act, 1962, has been completed. Therefore, I proceed to decide the case on the basis of documentary evidences available on records.

3.1 I find that M/s Jain Metal Rolling Mills (IEC No.0488048397) filed a Manual Bill of Entry NO. 112370 dated 16.06.2020 for clearance of 26.580 MT of "Lead Scrap Relay" under CTH 78020090 having value of Rs. 29,64,951/-(Assessable value). However, on examination of the imported cargo, the total weight of the cargo was found 26460 Kg. as against declared weight of 26580 kg. in the import documents, which have been accepted by them vide their letter dated 15.07.2020.

3.2 I further find that to verify the description of the goods, two (02) samples were drawn and forwarded to CRCL, Kandla vide TM No. IMP/AP&SEZ/2352/2020-21 & IMP/AP&SEZ/2353/2020-21 both dated 23.06.2020 who through their Test Reports vide Lab No. 997 dated 24.06.2020 and Lab No. 996 dated 24.06.2020 respectively have reported that It has the characteristics of armoured covered cable and it is other than Lead scrap (Relay) as per ISRI 2020. I also find that as per examination report, quantity of Lead scrap found is 17970 kg and that of copper wire scrap is 8530 kg and the Chartered Engineer has submitted his report that cargo is discarded, non-serviceable and is fit only for melting purpose.

3.3 I find from the Test Reports, that the goods are "Other than Relay scrap" as reported by CRCL, Kandla. Further, from the declared classification in the bill of entry, they themselves classified their products under Customs Tariff Heading No. 78020090, which is "Restricted" as per Import Export Policy, which is confirmed by the CRCL, Kandla. As the goods are restricted under Foreign Trade Policy and require a specific license for the clearance, which they do not have, hence the goods are liable for confiscation under Section 111(d) of the Customs Act, 1962. Thus, the said importer also liable for penal action under the provisions of Section 112(a) *ibid*.

3.4 I find that in terms of Sections 46(4) and (4A) of the Customs Act, 1962, the importers of any goods are required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration as to truth of the contents of such Bill of Entry, whereas in the instant case, the importer has filed Bill of entry with incorrect description, quantity, value, duty and importability under Import Export Policy etc. The Customs Laboratory ,

CRCL, Kandla vide their Test Reports Lab No. 997 dated 24.06.2020 and Lab No. 996 dated 24.06.2020 respectively have reported that It (imported goods) has the characteristics of armoured covered cable and it is other than Lead scrap (Relay) as per ISRI 2020. Further, the Chartered Engineer has submitted his report that cargo is discarded, non-serviceable and is fit only for melting purpose. Thus, I find that such acts of mis-declaration have rendered the impugned goods liable for confiscation under Section 111(m) and 111(l) of the Customs Act, 1962.

3.5 Further, I find that once the goods are held liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962, the person who in relation to such goods have done an act of omission and commission 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-declaration and having prohibition under Import Export Policy, of the imported goods which have been held liable for confiscation, therefore, the importer is liable to penal action under Section 112(a) of the Customs Act, 1962.


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

ORDER

(i) I order for confiscation of the goods viz. 26.580 MT of "Lead Scrap Relay", which is found to be "Other Than Relay" under CTH 78020090, valued at Rs. 28,86,590/- (Declared value Rs.29,64,591/- in Bill of Entry), covered under Manual Bill of Entry No. 112370 dated 16.06.2020, under the provisions of Section, 111(d), 111(m) and 111(l) of the Customs Act, 1962. However, I redeem the goods on payment of Redemption Fine of Rs. 4,00,000.00 (Rupees Four Lakh only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(ii) I also impose a penalty of Rs. 3,00,000.00 (Rupees Three Lakh only) on the importer M/s Jain Metal Rolling Mills, Unit-II, Plot No. R1/R2, Papankullam Village, Sipcot Industrial Complex, Gummidipoondi-601201, Tamilnadu under Section 112(a) of Customs Act, 1962.

5. 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/48-347/Gr.IV/MCH/2020-21

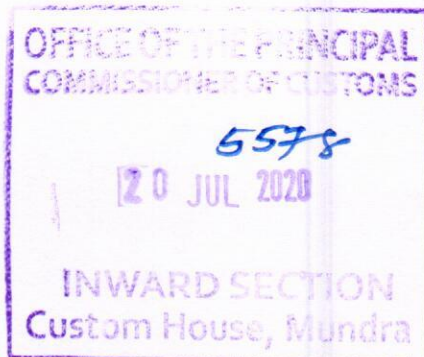
BY SPEED POST/E-Mail

To,
M/s Jain Metal Rolling Mills,
Unit-II, Plot No. R1/R2, Papankullam Village,
Sipcot Industrial Complex, Gummidipoondi-601201,
Tamilnadu

Dated: 20.07.2020

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-IV), Custom House, Mundra.
6. Guard File.



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