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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- 1616/Misc/GR-I/MCH/19-20
B	Order-in-Original No.	MCH/ADC/AK/ 91/2019-20
C	Passed by	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	08.01.2020
E	Date of Issue	08.01.2020
F	SCN NO. & Date	NIL
G	Noticee/Party/Importer / Exporter	M/s. Shree Swaminarayan Infrastructure Private Limited, 1 st Floor, Parmukh Complex, Nageshwar Road, Jamnagar-361001

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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.”

- 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.
- 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.
- 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.
- 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.

- 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 'Rough Marble Block' vide Bill of Entry No. 6182356 dated 21.12.2019 by M/s. Shree Swaminarayan Infrastructure Private Limited, 1st Floor, Parmukh Complex, Nageshwar Road, Jamnagar-361001 for violation of Customs Act and Rules thereon.

BRIEF FACTS OF THE CASE

M/s. Shree Swaminarayan Infrastructure Private Limited, 1st Floor, Parmukh Complex, Nageshwar Road, Jamnagar-361001 (IEC No.: 2410009301) filed Bill of Entry No. 6182356 dated 21.12.2019 through their Custom Broker M/s. Purshotam Chatrabhuj Thacker for clearance of 110.70 MTs of goods declared as "Rough Marble Block" under CTH 25151210 having assessable value of Rs. 15,86,266/- imported vide BL No.- MEDUL3427720 dated 30.10.2019. The goods are covered under Commercial Invoice No. MMTSIPL001BOTTO dated 01.12.2019 issued by Lazzarni Giuseppe SRL Soc. Uniperso Nale, Via Cereto, 19, 25080 Vallio Terme(BS), Italy, details of which are as under:-

S.No.	Bill of Entry No.	Date	Declared					
			Qty MTs	Ex.rate	Unit price declared	Assessable value	Duty declared	CIF Value
1	2	3	4	5	6	7	8	9
1	6182356	21.12.2019	110.70	71.9	181 USD	15,86,266/-	9,72,064/-	US\$ 199.29 per MT

1.1 As per DGFT Notification No. 27(RE-2015)/2015-2020 dated 17.09.2016, import of Rough Marble & Travertine Blocks is permitted freely w.e.f. 01.10.2016 provided CIF value is US\$ 200 or above per MT. However, the CIF Value of the goods comes to US\$199.29, which is less than US\$ 200 per MT.

1.2 Importer vide letter dated 06.01.2020 submitted that they have imported marble block 1st time and in their consignments the CIF value of Goods comes to 199.29 USD per MTs which is less by 0.71 USD per MTs.

1.3 As per the DGFT Notification No. 27 (RE-2015)/2015-2020 dated 17.09.2016, import of items falling under ITC (HS) code 25151210 is permitted freely w.e.f. 01.10.2016 provided CIF value is USD 200 or above per MT. Therefore, the rough marble block falling under CTI 25151210 is restricted if it is imported in less than USD 200 PMT CIF. In the present case, the importer has imported rough marble blocks at the rate of USD 199.29 PMT CIF, which is below the minimum floor price fixed of USD 200 PMT and hence, the importer has violated the provisions of DGFT Notification read with the provisions of Section 14 of the Customs Act, 1962, rendering the goods liable for confiscation under the provisions of Section 111(d) & (m) of the Customs Act, 1962 which prescribes as under:

"SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77²[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54]”

1.4 Also, for such an act of contravention of the provisions of the Customs Act / DGFT Notification, the importer is liable for penalty under Section 112 of the Customs Act, 1962.

1.5 The declared assessable value of the imported item is Rs 15,86,266/- and duty involved is Rs. 9,72,064/- . The assessable value as per the floor price fixed by the DGFT comes to Rs.15,91,866/- and duty involved thereon comes to Rs. 9,75,495/-.

2. The importer vide their letter dated 06.01.2020 has sought for waiver of SCN/Personal Hearing in the cases and requested to take lenient view while adjudicating the matter.

DISCUSSION AND FINDINGS

3. I have carefully gone through the records of the case and I find that the importer vide their letter dated 06.01.2020 has waived the issuance of show cause notice. Further they have also waived opportunity of personal hearing. Thus, I find that principles of natural justice as provided in Section 122 A of the Customs Act, 1962, has been complied with and therefore, I proceed to decide the case on the basis of evidences available on record.


3.1 I find that description of the impugned goods has been declared in the Bill of Entry as 'Rough Marble Block' and the same have been classified under tariff heading 25151210 with duty payable @ 40%. However, I find that the importer has imported Rough Marble Block having CIF value @ 199.29 USD per MTs which is less than US\$200/MT as per DGFT Notification No. 27(RE-2015)/2015-2020 dated 17.09.2016 and violated the provisions of Para 2.01 of Foreign Trade Policy issued by DGFT. By importing rough marble blocks at the rate of USD 199.29 PMT CIF, which is below the minimum floor price fixed of USD 200 PMT they violated the provisions of DGFT Notification read with the provisions of Section 14 of the Customs Act, 1962,. Therefore the importer has rendered the goods liable for confiscation under the provisions of Section 111(d) & (m) of the Customs Act, 1962 and also made themselves liable for penal action under Section 112(a) of the Customs Act, 1962.

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

ORDER

- a. I order to reject the declared value of the imported goods under Rule 12 of the Custom Valuation Rules, 2007 and order to re determine the same as per guidelines of DGFT for amounting to Rs. 15,91,866/- under Customs Valuation Rules, 2007.

- b. I Order to confiscate the offended goods valued at Rs. 15,91,866/- (re-determined) under Section 111(d) & 111(m) of Customs Act, 1962, however I give an option to the importer to redeem the confiscated goods on payment of Rs. 4,00,000.00/- (Rupees Four Lakh only) in lieu of confiscation under Section 125 of the Customs Act, 1962.
- c. I also impose a penalty of Rs.2,00,000.00/- (Rupees Two Lakh only) on the importer M/s. Shree Swaminarayan Infrastructure Private Limited under Section 112(a) of Customs Act, 1962.
- 5.. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.


(AJAY KUMAR)
Additional Commissioner,
Custom House Mundra
Dated: 08.01.2020

By REGD. POST A.D/Hand Delivery
DIN-20200171MO00009W5C14

To,

M/s. Shree Swaminarayan Infrastructure Private Limited,
1st Floor, Parmukh Complex, Nageshwar Road,
Jamnagar-361001

Copy to:

1. The Pr. Commissioner of Customs, Custom House, Mundra.
2. The Deputy Commissioner of Customs (RRA/TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra
4. CHA- M/s. Purshotam Chatrabhuj Thackar.
5. Guard File.