



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/48-42/Adj/ADC/MCH/2017-18
B	Order-in-Original No.	MCH/ADC/AS/108/2018-19
C	Passed by	Shri Amarjeet Singh Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	19.02.2019
E	Date of Issue	19.02.2019
F	SCN NO. & Date	F.No. DRI/AZU/GRU/Plaster Molda/INT-54/2015 dated 06.06.2016
G	Noticee / Party / Importer / Exporter	1. M/s Euro Ceramics Ltd., Survey No. 510, 511, 512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch)-370140

- 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 7<sup>th</sup> 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/- रूपए 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 –
  - उक्त अपील की एक प्रति और  
A copy of the appeal, and
  - 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/- रूपये 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 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.
- 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.

1. Subject:- SCN F.No. F. No. DRI/AZU/GRU/Plaster Molda/INT-54/2015  
dated 06.06.2016 issued to M/s Euro Ceramics Ltd., Survey No. 510, 511,  
512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch)-370140

### **Brief Facts of the case.**

Intelligence gathered by DR1, Gandhidham indicated that M/s Euro Ceramics Ltd., Survey No. 510, 511, 512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch)-370140 (hereinafter also referred to as "Importer") were engaged in misdeclaration and mis-classification of goods imported by them with declared description "Plaster Molda SN 75 C" (hereinafter also referred to as "subject import goods" or "subject goods"). They were classifying the subject import goods in the import documents filed before Customs Department under CTH 2520 2090 of Customs Tariff Act, 1975.

2. Based on the above intelligence, consignment of subject goods imported at Mundra Port attempted to be cleared under Bill of Entry No. 3499079 dated 07.12.2015 (RUD No.1) through Custom House Mundra was examined by officers of DR1 under Panchanama dated 09.12.2015 (RUDNo.2). Representative samples were drawn and the said consignment weighing 24 MT, having Assessable Value Rs. 2,57,498/- were detained from further clearance vide the said Panchanama. Later on the subject goods were placed under seizure vide seizure Memo dated 21.12.2015 issued from F. No. DR1/AZU/GRU/Plaster Molda/ INT-54/2015

3. Statement of Shri M. Ganapathy, Sr. Production Manager in M/s EuroCeramics Ltd., was recorded under Section 108 of the Customs Act, 1962, on 22.01.2016 (RUD No.4 of the SCN), wherein he inter alia stated that he was serving as a Sr Production Manager in M/s Euro Ceramics Ltd., since October 2015 and looking after production process of sanitary ware and other products viz moulds, glaze, body (slip) etc. On being asked about his role in import of Plaster Molda "SN 75 C" he stated that the said product is required to produce moulds for producing sanitary ware; that the role of mould is similar to that of die in case of metals; that additionally the moulds also serve other purposes like water absorption from slip (slurry of blended raw materials), thickness formation of slip and maintaining suspension solution; that the said moulds are used again and again to produce sanitary ware. That they are procuring the said material from M/s Thai Gypsum Products PCI, Thailand, which is a Saint Gobain group company; that in import his role is limited to ascertaining quantity of this material required to be imported. On being asked about characteristics of "Plaster Molda SN 75 C" he stated that normal plaster prepared by calcinations of gypsum has setting time of 8-10 minutes; that for their moulds, setting time required is 11-14 minutes so some retarder is supposed to be added in normal plaster; that other than retarder, there may be some additives added but the companies/manufacturers generally keep that

secret. On being asked specifically he stated that depending upon the setting time required, either retarder is added to normal plaster for increasing setting time or accelerator is added to reduce setting time. Both can't be added simultaneously. He produced catalogue of all products of supplier i.e. Formula Saint Gobain and material safety data sheet (MSDS) issued by Formula and Gyproc for manufacturer M/s Thai Gypsum Products PCI, Thailand. On being shown and asked to read MSDSs issued by formula and that by Gyproc in respect of Molda SN 75 C manufactured by M/s Thai Gypsum Products PCI, Thailand he admitted that it is M/s Euro Ceramics Ltd., Bhachau clear from both MSDS that some additives viz plasticizers/resins /polymers etc are present in "Plaster Molda SN 75 C" in addition to Plaster and accelerator/retarder. On being asked specifically he stated that he was not aware about the classification and duty rate applicable to product; that the said aspect is looked after by Shri Kumar bhai, Director.

4. Statement of Shri Kumar Panchalal Shah, Director of M/s Euro Ceramics Ltd., Survey No.510, 511, 512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch) was recorded under Section 108 of the Customs Act, 1962, on 04.02.2016, wherein he, inter alia, stated that M/s Euro Ceramics Ltd is engaged in production of sanitary ware & tiles and other products viz moulds, glaze, body (slip) etc; that he was handling overall supervision of factory at Bhachau, its administrative and procurement work including imports. On being asked specifically he stated "Plaster Molda SN 75 C" is required to produce moulds for producing sanitary ware; that the said moulds are used again and again to produce sanitary ware; that they are procuring this material from M/S Thai Gypsum Products PC1, Thailand, which is a Saint Gobain group company. On being asked specifically he stated that he did not know the technical details of said product and that their production department finalizes the product and he executes the procurement. On being asked about finalizing Tariff Classification of "Plaster Molda SN 75 C", he stated that they provide import documents including "form AI" received from supplier to CHA (Customs Broker); that the CHA files Bill of Entry; that customs Classification was also finalized by their CHA M/s Rishad Shipping & Clearing Agency. On being shown Material Safety Data sheet (91/155/EEC) issued by Formula he admitted that chemical composition of "Plaster Molda SN 75 C" was mentioned as "mixture of Calcium Sulphate with other additives mainly Plasticizer, retarder and ground gypsum" and that in Material Safety Data sheet dated 01.04.2013 issued by Gyproc it is mentioned as "gypsum based plaster principally calcium sulphate hemihydrates and natural constituents which may include clay, lime stone and minor amounts of quartz. Additives include resin and polymers". On being asked specifically he admitted that it is clear

from both MSDS that some additives viz plasticizers/resins /polymers etc are present in "Plaster Molda SN 75 C" in addition to Plaster and accelerator/retarder. Further he agreed that "Plaster Molda SN 75 C" does not merit classification under cm 2520 and that it was better covered by CTH 3824. He promised to pay differential duty arising out of change in classification of import goods.

5. Statement of Shri S. Sushilkumar Ramkumar, G card holder of M/s Rishad Shipping and clearing Agencies Pvt. Ltd was recorded under Section 108 of the Customs Act, 1962, on 03.06.2016 wherein he, inter alia, stated that he cleared imported Plaster Molda SN 75C on behalf of M/s Euro Ceramics Ltd. on the basis of documents (BL, invoice, packing list, previous BE and country of origin). On the basis of previous BE and country of origin, he classified the product under chapter 25; the item in both MSDS (issued by Formula and Gyproc) is "Molda SN 75 C" manufactured by M/S Thai Gypsum Products PC1, Thailand. In MSDS issued by Formula, the chemical composition is mentioned as "mixture of calcium sulphate with other additives mainly Plasticizer, retarder and ground gypsum". In MSDS issued by Gyproc, the chemical composition is mentioned as "gypsum based plasters principally calcium sulphate hemihydrates and natural constituents which may include clay, lime stone and minor amounts of quartz. Additive include resin and polymers"; It is clear from both MSDS that some additives viz plasticizers/resins/polymers etc. are present in "Plaster Molda SN 75 C" in addition to Plaster and accelerator / retarder; on the basis of Composition of product "Plaster Molda SN 75 C" in MSDS and the wordings of Note 1 to Chapter 25 and description of CTH 2520 of Customs Tariff, he agreed that import product "Plaster Molda SN 75 C" is also composed additives/items other than retarder/accelerator and beyond process of calcinations; he agreed that import product does not merit classification under CTH 2520 of Customs Tariff; he agreed that import product is better covered by this CTH 3824.

6. Statement of Shri Vinod V Pillai, H card holder of M/s Ashapura shipping Agency was recorded under Section 108 of the Customs Act, 1962 on 4.07.2016 wherein he, inter alia, stated that he cleared imported Plaster Molda SN 75C on behalf of M/s EURO Ceramics Ltd. on the basis of documents (BL, invoice, packing list, country of origin). On the basis of MSDS and country of origin, he classified the product under chapter 25; he stated that the item in both MSDS (issued by Formula and Gyproc) is "Molda SN 75 C" manufactured by M/S. Thai Gypsum Products PC1, Thailand. In MSDS issued by Formula, the chemical composition is mentioned as "mixture of calcium sulphate with other additives mainly Plasticizer, retarder and ground gypsum". In MSDS issued by Gyproc, the chemical composition is mentioned as "gypsum based plaster

principally calcium sulphate hemihydrates and natural constituents which may include clay, lime stone and minor amounts of quartz. Additive includes resin and polymers. It is clear from both MSDS that some additives viz plasticizers/resins/polymers etc. are present in "Plaster Molda SN 75 C" in addition to Plaster and accelerator/ retarder. Further, on being shown the test result issued by Central Excise and Customs Laboratory, Vadodara he stated that the test report confirms that the sample is tailor made preparation based on calcium sulphate. Such preparation excluded from section V of C.T. On the basis of Composition of product "Plaster Molda SN 75 C" in MSDS and the wordings of Note 1 to Chapter 25 and description of CTH 2520 of Customs Tariff, he agreed that import product "Plaster Molda SN 75 C" is also composed additives/items other than retarder/accelerator and beyond process mentioned in CTH 2520; he agreed that import product does not merit classification under CTH 2520 of Customs Tariff; he agreed that import product is better covered by this CTH 3824.

#### **7. Actual identity of the import goods;**

7.1 The analysis of Material Safety Data Sheet ("MSDS" for Short) issued by Formula in respect of the subject import goods i.e. "Plaster Molda SN 75 C" revealed that the said goods were composed to "mixture of calcium sulphate with other additives mainly Plasticizer, retarder and ground gypsum". Formula is another Saint Gobain Group Company through which the subject goods used to be imported by M/s Euro Ceramics Ltd., Bhachau (Kutch). Similarly as per MSDS issued by Gyproc (another Saint Gobain Group Company), in respect of the subject goods, the said goods are said to be "gypsum based plaster principally calcium sulphate hemihydrates and natural constituents which may include clay, lime stone and minor amounts of quartz; Additives included resin and polymers". The same Material Safety Data Sheets were produced by Shri M. Ganapathy, Sr. Production Manager in M/s Euro Ceramics Ltd., Bhachau (Kutch) and Shri Kumar Panchalal Shah, Director of M/s Euro Ceramics Ltd., Bhachau (Kutch) during recording of their respective statements. Further Test Report issued by Central Excise and Custom Laboratory(RUD NO.10) in the case of M/s CERA Sanitaryware Limited for the same product(Plaster Molda SN 75C)state that the sample is in the form of white fine powder. It is mainly composed of calcium sulphate along with other additive (other than accelerators & retarders), % calcium sulphate hemihydrates = 95.0%. As per the test carried out in this laboratory and the technical literature submitted by the importer with T.M. The sample is tailor made preparation based on calcium sulphate. Such preparation is excluded from Section V of Customs Tariff. Further, both Shri M. Ganapathy and Shri

Kumar Panchalal Shah agreed in their respective statements that subject import goods i.e. "Plaster Molda SN 75 C" was not normal plaster classifiable under CTH 2520.

7.2 As per Note 1 to Chapter 25, " Except where their context or Note 4 to this Chapter otherwise requires, the headings of this Chapter cover only products which are in the crude state or which have been washed (even with chemical substances eliminating the impurities without changing the structure of the product), crushed, ground, powdered, levitated, sifted, screened, concentrated by flotation, magnetic separation or other mechanical or physical processes (except crystallization), but not products that have been roasted, calcined, obtained by mixing or subjected to processing beyond that mentioned in each heading... ". Importer M/s Euro Ceramics Ltd., Bhachau (Kutch) have classified subject goods under CTH2520. The said Chapter Heading 2520 includes "Gypsum; Anhydrite; Plasters (consisting of calcined gypsum or calcium sulphate) whether or not coloured, with or without small quantities of accelerators or retarders". A combined reading of Note 1 to chapter 25 and that of Chapter heading 2520 makes it clear that only those plasters consisting of calcined gypsum or calcium sulphate with or without small quantities of accelerators or retarders are included under CTF (2520. However, as per MSDS, the subject import goods i.e. "Plaster Molda SN 75 in addition to accelerator/retarders also contain Plasticizer, polymer and resin. This fact has also been admitted by Shri M. Ganapathy, Sr. Production Manager and Shri Kumar Panchalal Shah, Director in their respective statements. Moreover, Shri Kumar also confirmed via mail dated 18.12.2015 that the plasticizer and additives are indeed added to the product. Further, Material Safety Data Sheet ("MSDS" for Short) downloaded from the website [www.saintgobainformula.com/eng/tds/export/\(nidj120021](http://www.saintgobainformula.com/eng/tds/export/(nidj120021) also confirms that it is formulated plaster. Since the subject import goods "Plaster Molda SN 75 C" is composed materials/ manufactured using processes not covered under the scope of CTH 2520, the subject goods are not classifiable under CTH 2520. Therefore it appears that just to take undue benefit of lower Duty of Customs applicable to goods of CTH 2520 the non-generic description i.e. "Plaster Molda SN 75 C" has been declared in the import documents and in Bills of Entry being filed for clearance thereof from Customs Department. The actual product was Chemical Preparation/Customized Product meriting classification under CTH 3824 9090. Therefore, "Plaster Molda SN 75 C" is not the true description of the subject import goods.

7.3 It also appears from the chapter note that the products covered in the chapter 25 are in crude state and suitable for general use and specifically excluded products modified for specific use. Hence "Plaster Molda SN 75C",

which has specific use, cannot be classified in the chapter 25.

## **8. Demand of differential duty**

8.1 It is the responsibility of the importer under self-assessment system, to declare the correct facts with regard to the imported goods and to classify them under the appropriate customs tariff heading. However, the above discussed evidences show that with intent to evade the customs duty, the said importer had suppressed the material facts and mis-declared the description of the imported goods and mis-classified the same under CTI 2520 instead of correct classification under CTI 38249090. They also had not produced Material data safety data sheet to Customs. These facts clearly show willful mis-declaration on their part. Hence, provisions of Section 28(4) of Customs Act, 1962 for extended period of demand of evaded duty appears to be applicable. The above discussed facts and evidences show that the importer resorted to willful mis-declaration and mis-classification with an ulterior motive of evading payment of the applicable duty on "Plaster Molda SN 75C", in the consignments cleared for home consumption vide the Bills of Entry listed in Annexure-A and Annexure-B to the Notice. The details of duty actually paid, required to be paid and the evaded differential duty (Column No. 18) are detailed separately in Annexure-A (Final Bs/E) and Annexure-B (Provisional Bs/E) (Duty Calculation Sheets) attached to this Notice.

8.2 The said importer had got clearance of "Plaster Molda SN 750" under Bills of Entry as detailed in Annexure-A which were assessed finally. In these finally assessed Bills of Entry as mentioned in Annexure-A appended to this SCN, total 1157.28 MT of "Plaster Molda SN 75C" having assessable value of Rs. 12879103/- was cleared. Total differential duty in respect to these finally assessed Bills of Entry comes to Rs. 2747629/-. Thus, the differential duties of Customs aggregating to Rs. 2747629/- in respect of 1157.28 MT of imported "Plaster Molda SN 750" cleared under Bills of Entry listed in Annexure- A, is liable to be demanded and recovered from them under Section 28 (4) of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. Further, the said importer had filed Bills of Entry as detailed in Annexure-B to this Show Cause Notice which were assessed provisionally. In these provisionally assessed Bills of Entry as mentioned in Annexure-B appended to this SCN, total 48.00 MT of "Plaster molda SN 75C" having assessable value of Rs. 519539/- was cleared. Total differential duty in respect to these provisional assessed Bills of Entry comes to Rs. 116524/-. Thus, the differential duties of Customs aggregating to Rs. 116524/- in respect of 48 MT of imported "Plaster Molda SN 75C" cleared under Bills of Entry listed in Annexure- B, is liable to be demanded and

recovered from them under Section 18 (2) of Customs Act, 1962 read with Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28AA/ 18(3) of the Customs Act, 1962. During the course of investigation, the said importer had made payment of differential duty of Rs. 5,06,260/- in respect of some clearance of "Plaster Molda SN 75C " at Mundra on 30.06.2016.

## **9. CONFISCATION OF GOODS**

9.1 The subject import goods were being imported by M/s EURO Ceramics Ltd. for many years. The subject goods are Chemical Preparation of specific quality of Plaster which is used by the importer to prepare moulds for manufacturing sanitary ware. The moulds are meant for repetitive use. It is forthcoming from foregoing Paras that the importer was aware of the fact that their import product was not natural plaster but a specific grade of the Plaster having plasticizer, resin and additives. Despite this, it appears that, importer mis-declared the import goods by declaring a non-generic description and mis-classified the goods under CTH 2520 though the same were not classifiable under CTH2520. This act of mis-declaration of description of subject import goods i.e. special grade plaster (tailor made preparation) as "Plaster Molda SN 75 C" in Bill of Entry No. Bills of Entry mentioned in Annexure "A" to the SCN and its mis-classification under CTH 2520 of Customs Tariff had rendered the said 1157.28 MT of special grade plaster valued at Rs 12879103/- (assessable value) liable for confiscation under the provisions of Section 111 (m) of Customs Act, 1962. The Show Cause Notice covering the issue of only confiscation of goods sought clearance under Bill of Entry No. 3499079 dated 07.12.2015 has been issued on 06.06.2016.)

## **10. Role of M/s EURO Ceramics Limited, Kadi:**

10.1 M/s EURO Ceramics Limited, Bhachau is engaged in manufacture of sanitary ware. The said sanitary wares are manufactured using specific category of moulds. The said moulds are prepared using a special category of plaster which is imported by them from M/s. Thai Gypsum Products PCI, Thailand. The said special category of plaster, as revealed in investigation as discussed above at Para 4.1 and 4.2, is manufactured using gypsum, plasticizer, resin and other additives. This fact was very well known to importer. Despite being aware of this fact the subject goods i.e. special category plaster (a tailor made preparation meriting classification under CTH 3824) were mis-declared as "Plaster Molda SN 75 C" (a non-generic description) in Bills of Entry as mentioned in Annexure-"A" and "B" to the SCN and mis-classified



under CTH 2520 to take undue advantage of lower rate of customs duty applicable to goods of CTH 2520. This willful mis-declaration and mis-classification of goods in the Bills of Entry mentioned in Annexure-"A" and "B" to the SCN and connected import documents have rendered the goods covered therein liable to confiscation under Section 111 (m) of the Customs Act, 1962 and M/s Euro Ceramics Ltd., Bhachau liable to penalty under Section 112 (a) of the Customs Act, 1962. (The Show Cause Notice covering the issue of only confiscation of goods sought clearance under Bill of Entry No. 3499079 dated 07.12.2015 has been issued on 06.06.2016.)

10.2 Therefore, M/s Euro Ceramics Ltd., Survey No. 510, 511, 512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch)-370140 are hereby called upon to show cause under F. No. DRI/AZU/GRU/Plaster Molda/INT-54/2015-16 dated 06.06.2016 answerable to the Additional Commissioner of Customs, Custom House, Mundra Port & SEZ, Mundra as to why:-

- (a) The declared classification of the 1157.28 MT "Rumor Molda SN 75C" classified under heading 2520 of Customs Tariff under Bills of Entry detailed in Annexure-A to the Notice, should not be rejected and the subject goods be classified under CTI 38249090 and the Bills of Entry be reassessed accordingly.
- (b) The differential customs duty as aggregating to Rs. 27,47,629/- (Rupees Twenty Seven Lacs Fourty Seven Thousand Six Hundred Twenty Nine only) leviable on the "Plaster Molda SN 75C" covered under Bills of Entry, listed in Annexure-A to the Notice, should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (c) The declared classification of the 48 MT having assessable value of Rs. 5,19,539/- imported "Plaster Molda SN 75C" as CTI 2520 under Bills of Entry detailed in Annexure-B to the Notice, should not be rejected and the subject goods be classified under CTI 38249090 and accordingly the Bills of Entry be assessed finally, under Section 18 (2) of Customs Act, 1962.
- (d) The differential customs duty aggregating to Rs. 1,16,524/- (Rupees One Lacs Sixteen Thousand Five Hundred Twenty Four Only) leviable on the "Plaster Molda SN 75C" covered under Bills of Entry, listed in Annexure-B to the Notice, should not be demanded and recovered from them under Section 18 (2) of Customs Act, 1962 read with Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA/18

(3) of the Customs Act, 1962.

(e) 1157.28 MT of special category plaster imported under Bills of Entry No. as mentioned in Annexure-A to the Notice having assessable value Rs. 1,28,79,103/- should not be held liable to confiscation as per provisions of Section 111 (m) of Customs Act, 1962.

(f) Penalty should not be imposed on them under Section 112 (a) and 114A of the Customs Act, 1962, for the reasons discussed above.

(g) The Payments made by M/s. EURO Ceramics Limited, as detailed in para 5 above should not be adjusted and appropriated against their liability.

10.3 M/s Euro Ceramics Ltd., Survey No. 510, 511, 512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch) - 370140 Vide SCN F. No. DRI/AZU/GRU/Plaster Molda/Int-54/2015 dated 06.06.2016 were also proposed for confiscation of 24 MT of special category of plaster imported under Bill of Entry No. 3499079 dated 07.12.2015 having assessable value Rs. 2,57,498/- along with penal action under Section 111 (m) and Section 112 (a) of Customs Act, 1962 respectively.

11. The above SCN was adjudicated vide OIO No. MCH/JC/GPM/185/2016-17 dated 04.01.2017 and pass the following orders:

- (i) I order to reject declared classification of the 1157.28MT "Plaster Molda SN 75C" classified under heading 2520 of CTI under Bills of Entry detailed in Annexure-A to the SCN and order to classify the same under CTI 38249090 and accordingly, to reassess the Bills of Entry. I order to recover differential customs duty amounting to Rs. 27,47,629/- (Rs. Twenty Seven Lacs Fourty Seven Thousand Six Hundred Twenty Nine only) leviable on the "Plaster Molda SN 75C" covered under Bills of Entry listed in Annexure A to the SCN under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- (ii) I order to reject classification of the 48 MT having assessable value of Rs 5,19,539/- imported "Plaster Molda SN 75C" as CTI 2520 under Bills of Entry detailed in Annexure B to the SCN and reclassify the same under CTI 38249090 and, accordingly to reassess the Bill of Entry under Section 18(2) of Customs Act, 1962.
- (iii) I demand and order to recover differential customs duty amounting to Rs. 1,16,524/- (Rupees One Lacs Sixteen Thousand Five Hundred Twenty Four Only) leviable on the "Plaster Molda SN 75C" covered under Bills of Entry, listed in Annexure B to the SCN under Section

18 (2) of Customs Act, 1962 along with applicable interest under Section 28AA/18(3) of the Customs Act, 1962.

- (iv) I order to confiscate 1157.28 MT of special category plaster importer under Bills of Entry as mentioned in Annexure A having assessable value Rs. 1,28,79,103/- under Section 111(m) of Customs Act, 1962. Since the goods are physically not available, I refrain from imposition of any redemption fine in view of the settled legal position.
- (v) I impose a penalty of Rs. 28,64,153/- (Rs. Twenty Eight Lakhs Sixty Four Thousand One Hundred Fifty Three Only) and an amount equivalent to interest payable, on M/s EURO Ceramics Ltd. under section 114A of the Customs Act, 1962.
- (vi) I order to adjust and appropriate the payments made by M/s Euro Ceramics Limited as detailed in Para 5 of the SCN against their liability.
- (vii) I also order to confiscate 24 MT of Special Category Plaster imported under Bill of Entry No. 3499079 dated 07.12.2015 having assessable value 2,57,493/- under Section 111(m) of Customs Act, 1962 as proposed vide SCN F.No. DRI/AZU/GRU/Plaster Molda/INT-54/2015 dated 06.06.2016. However, since the goods in question are not available for confiscation as the same are provisionally released on execution of Bond for full value of goods and on payment of duty amounting to Rs. 34,479/-, I order to enforce the Bond and appropriate the duty amount accordingly.
- (viii) I also impose a penalty of Rs.10,000/- (Rs. Ten Thousand only) under Section 112 (a) of Customs Act, 1962 as per the proposal made under SCN DRI/AZU/GRU/Plaster Molda/ M -54/2015 dated 06.06.2016.

14. Aggrieved by aforesaid decision of the Additional Commissioner, (i) Appeal No.697/CUS/MLIN/2016 has been filed by M/s. Euro Ceramics Ltd., Survey No.510,51.1, 512, 517/1, Bhachau Dudhai Road, Bhachau. Kutch – 370140 (Appellant 1) and (ii) Appeal No.6/CA-2/CUS/MUN/2016 has been filed by Revenue (Appellant 2) against the OIO No. MCH/JC/CPM/185/2016-17 dated 04.01.2017 before the Commissioner of Customs (Appeal), Ahmedabad.

15. The aforesaid Appeals were decided by the Commissioner of Customs (Appeal), Ahmedabad vide its Order No. MUN-CUSTOM-000-APP-268 & 269-17-18 dated 06.12.2017 held that:-

*“I reject the appeal filed by the Appellant No. 1 (Euro Ceramics Ltd.). I allow the appeal filed by the Appellant No. 2 (Revenue) for imposition of redemption fine under Section 125 of the Customs Act. 1962. The matter is remanded to*

the adjudicating authority to pass speaking order for imposing redemption fine”.

#### **DISCUSSION AND FINDINGS:**

**24.** I have carefully gone through the case records pertaining to the issue. I find that earlier OIO No. MCH/JC/CPM/185/2016-17 dated 04.01.2017 passed by my predecessor has been remand back by the Commissioner (Appeal), Customs, Ahmedabad vide OIA No. MUN-CUSTOM-000-APP-268 & 269-17-18 dated 06.12.2017. Regarding the portion of the earlier Adjudication order upheld by the Commissioner (Appeal), Customs, Ahmedabad, I therefore proceed to implement Commissioner (Appeal), Customs, Ahmedabad regarding imposition of redemption fine under Section 125 of the Customs Act, 1962 on 24 MT of the imported cargo as mentioned at S. No. (Viii) of the aforesaid OIO dated 04.01.2017.

**25.** The short issue to be decided is whether redemption fine under Section 125(1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation.

The Section 125(1) *ibid* reads as under:

**Section 125.** *Option to pay fine in lieu of confiscation.— (1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.*

25.1 A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. First of all, I find that it is well settled legal position that when goods are not available for confiscation, redemption fine cannot be imposed. In the matter of Commissioner of Customs (Imp.), Nhava Sheva Vs. S.B. Impex [2017 (358) E.L.T. 358 (Tri. Mumbai)], it was held that:

*6. It is noticed that the goods on which the Revenue has sought imposition of redemption fine were cleared and disposed of by the appellant. The said goods are not available for confiscation. The said goods were also not seized and released under any bond or undertaking. In these circumstances, the same cannot be confiscated and therefore, no redemption fine could have been imposed.*

The above view has been consistently reiterated by various higher forums/courts in various cases.

25.2 Further, in the matter of Weston Components Ltd. Vs. Commissioner of Customs, New Delhi [2000 (115) E.L.T. 278 (SC)], it was held by the Hon'ble Supreme Court that:

*It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.*

25.3 The above judgment was delivered on specific issue and facts of the case were not discussed in detail in the said judgment. The above judgment was delivered by the Hon'ble Supreme Court in Civil Appeal No. 7144 of 1999, filed against the order of Hon'ble Tribunal reported at 1999 (84) ECR 259 (Tri Delhi). In the said order, Hon'ble Tribunal discussed the issue in brief wherein it is mentioned that the goods involved in that case were provisionally released. Therefore, it emerges from the said judicial pronouncements that redemption fine can be imposed against those goods also which are not physically available but were provisionally released against bond.

25.4 In the matter of Lubrizol Advanced materials India Pvt. Ltd. Vs. C.C.E. Vadodara-I [2013 (290) E.L.T. 453 (Tri.-Ahmd.)], it was held by the Hon'ble Tribunal that:

*Moreover, in the case of Weston Components reported in 2000 (115) E.L.T. 278 (S.C.), the goods had been released provisionally under a bond and it is nobody's case in this case that goods were seized and released provisionally under a bond. In the absence of seizure, the decision of the Hon'ble Supreme Court in the case of Weston Components cannot be applied.*

25.5 Further, in the matter of Commissioner of Central Excise, Surat-II Vs. Citizen Synthesis [2010 (261) E.L.T. 843 (Tri.Ahmd.)], it was held by the Hon'ble Tribunal that:

*Learned SDR on behalf of the Revenue submits that Revenue is in appeal against the conclusion of Commissioner that clandestinely cleared goods which are not available for confiscation, cannot be confiscated and setting aside redemption fine of Rs. 50,000/- imposed. He relies on the decision of Hon'ble Supreme Court in the case of M/s. Weston Components as reported in 2000 (115) E.L.T. 278 (S.C.), in support of his contention that redemption*

*fine is imposable even when the goods are not available for confiscation. I find that the decision of Hon'ble Supreme Court in the case of M/s. Weston Components was rendered wherein the goods had been released to the appellatant after execution of bond. Obviously, it was the case of provisional release. Learned SDR fairly admitted that in this case, the goods had not been provisionally released, but removed clandestinely. Therefore, the judgment cited by the learned SDR is not relevant.*

25.6 In the matter of Commissioner of Central Excise, Surat Vs. Gunjan Exports [2013 (295) E.L.T. 733 (Tri. Ahmd.)], it was held that:

*5. I have considered the submissions and I find myself unable to appreciate the submissions. The Hon'ble Supreme Court had clearly held in the case of Weston Components Limited that when the goods are released provisionally on execution of bond, confiscation can be affected even if the goods are not available. The natural conclusion is that the goods should have been released on bond which would mean that the goods have been taken possession of by way of seizure and subsequently released on execution of bond. Admittedly that is not the situation in this case also. In this case, respondents themselves have diverted the goods and after diversion, proceedings have been initiated. There is no seizure of the diverted goods and release of the same provisionally on execution of bond. Therefore, the issue is covered by the decision of the Hon'ble Supreme Court and in the absence of release on the basis of execution of a bond, goods could not have been confiscated. The decision of the Larger Bench of the Tribunal relied upon by the learned Commissioner is also applicable since in this case also there is no bond with a security is available. The B-17 Bond is a general purpose bond undertaking to fulfil the conditions of notification and other requirements and does not help the Revenue to confiscate the goods not available and impose the redemption fine in lieu of confiscation. Further, the confiscation always presumes availability of goods and presumption normally is that goods have been seized and thereafter the proceedings would culminate into confiscation or release. Confiscation would mean that seized goods become the property of the Government and the party to whom it is ordered to be released on payment of fine, will have to pay fine and redeem the goods. When the goods have been diverted and not released on execution of bond with conditions, the question of confiscation of the same does not arise since goods have already become someone else's property. Under these circumstances, I find no merits in the appeal filed by the Revenue and accordingly, reject the same.*

25.7 In view of the above discussion and judicial pronouncements, I find that redemption fine can be imposed only in those cases where goods are either available or the goods have been released provisionally under Section 110A of the Customs Act, 1962, against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in the adjudication proceedings. In the instant case, the impugned goods i.e. 24 MT of imported special Category Plaster were physically not available for confiscation as the same were seized and provisionally released on execution of Bond for full value of the said goods. Therefore, I find that redemption fine can be imposed in this case.

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

**ORDER**

- (i) I impose redemption fine of Rs. 20,000/- (Rupees Twenty Thousand only) under Section 125 of the Customs Act, 1962 in lieu of confiscation of the impugned goods i.e. 24 MT of Special Category Plaster imported under Bill of Entry No. 3499079 dated 07.12.2015 having assessable value 2,57,493/- which has already been confiscated vide OIO No. MCH/JC/CPM/185/2016-17 dated 04.01.2017 under Section 111(m) of the Customs Act, 1962.

  
(Amarjeet Singh)

Additional Commissioner  
Customs House, Mundra

F. No. VIII/48-42/Adj/ADC/MCH/17-18

Date: 19.02.2019

**By R.P.A.D.**

To,

M/s Euro Ceramics Ltd., Survey No. 510, 511, 512, 517/1, Bhachau Dudhai Road, Bhachau (Kutch)-370140.

**Copy To:**

1. Additional Director, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, Unit No. 15, Magnet Corporate Park, S.G. Highway, Thaltej, Ahmedabad-380059
2. The Deputy Director, DRI, Regional Unit, Gandhidham, Plot No. 193, Sector-IV, OSLO, Gandhidham, Kutch-370201
3. Deputy Commissioner, Import Assessment, Group-I, Customs House, Mundra.

4. The Deputy Commissioner (RRA), Customs House Mundra.
5. The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
6. The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
7. Guard File