

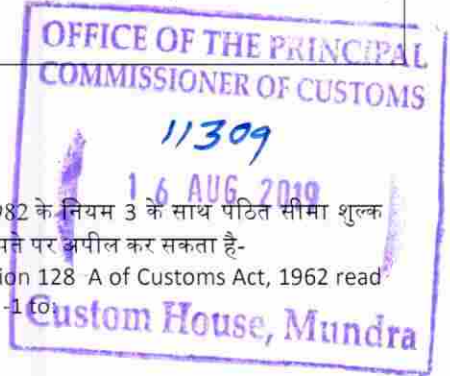


OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,  
CUSTOM HOUSE: MUNDRA, KUTCH  
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421  
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

A	File No.	VIII/48-465/Adj./Gr-IV/MCH/19-20
B	Order-in-Original No.	MCH/ADC/PSK/45/2019-20
C	Passed by	Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	07.08.2019
E	Date of Issue	07.08.2019
F	SCN NO. & Date	SCN waived vide letter dated 24.06.2019 & 30.07.2019, Bill of Entry No. 3109773 dated 04.05.2019
G	Noticee / Party / Importer / Exporter	M/s Suraj Recycling Pvt. Ltd., Plot No. 565/66, GIDC Phase-II, Dared, Jamnagar, Gujarat

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 128A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताया 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 वींमंजिल,मृदुल टावर,टाइम्स ऑफ इंडिया के पीछे,आश्रम रोड,अहमदाबाद380 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 इस के 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/- रुपए 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: Import of Mix Metal Brass Scrap with Impurities by M/s Suraj Recycling Pvt. Ltd., Plot No. 565/66, GIDC Phase-II, Dared, Jamnagar, Gujarat vide BE No. 3109773 dt. 04.05.2019 violation of Customs Act and Rules thereon.**

**Brief facts of the case:**

M/s Suraj Recycling Pvt. Ltd., Plot No. 565/66, GIDC Phase-II, Dared, Jamnagar, Gujarat filed the Bill of Entry No. 3109773 dt. 04.05.2019 for clearance of Mix Metal Brass Scrap with impurities. The total weight declared is 22.28 MT and assessable value declared is Rs. 27,31,149.24/-. The goods are of US origin and Port of loading is Newark.

(2) The Bill of Lading No. MAEU968294662 dt. 01.04.2019 has been issued by Maersk line. The Bill of Lading also describes the goods as Mix Metal Brass Scrap with impurities. The net weight is 22.280 MT & Gross weight is 22.625 MT. The Port of loading is declared as Newark. The invoice no. 76243 dt. 01.04.2019 declare the unit price of 1,740/MT CIF & for 22.280 MT of Mix Metal Brass Scrap the total value is USD 38757.20/- CIF. The packing list state that goods are packed in 22 packages. The invoice has been raised by Royce Corporation, Miami, Florida, USA. The certificate of insurance no. 4839581000122 dt. 28.03.2019 is for USD 42,643.92/-

(3) However, during 100% examination under supervision of AC (Docks) some black/brown coloured powder unknown substance along with some metal pieces and another material which appeared like ammunition/war scrap related material was found in drums & matter was referred to SIIB section.

(4) On 100% examination it was found that container was stuffed with small metallic article, crushed metallic pieces of metallic yellow/red colour & grey colour article filled in metal drums & plastic buckets. In most of the drums the crushed metallic pieces appeared to be mixed with dust/dirt. In some of the drums, small dirty fibres/remains of rags/jute bags were also found. In majority of the drums & the buckets contained metallic articles resembling bullets of various type & sizes used in guns & fire arms.

(5) A statement of Director of Importer Sh. Sanjay Bhanderi was recorded under section 108 of the Customs Act, 1962 on 10.06.2019 when he inter alia stated that-

(i) He had imported Mix Metal Brass scrap with impurities and articles resemble bullets and none of the bullets is live. The bullets are actually the front portion of the cartridge i.e the projectile. It does not contain the propellant or gun powder in any form. Further the crushed metallic pieces are actually crushed bullets or projectiles & these bullets/projectiles in the instant consignment will also get the same form after being crushed.

(ii) Shri Sanjay Bhanderi agreed that if the form in which the goods are imported i.e. bullets & projectiles is causing the problem & they agree to get the bullets /projectiles crushed using rollers before clearance.

(iii) Shri Sanjay Bhanderi also agreed that goods imported consist of cartridges parts i.e. used projectiles bullets and stated that they have imported "Mix Metal Brass Scrap with impurities" and bullets/projectiles found in the examination are made up of mix metal scrap and are not live and do not contain any propellant/gun powder.

(6) The Pre Shipment Inspection Agency M/s Tubby Impex Pvt. Ltd. Vide their PSIC Certificate No. Tubby/2019/174368 declares:-

*"The consignment does not contain any types of arms, ammunition, mines, shells, cartridges or any other explosive material in any form, either used or otherwise, and that the consignment was checked for radiation level and it does not have radiation level (gamma & neutron) in excess of natural background. The radiation level of the consignment is within the accepted range & is fit to be exported to India."*

6.1 The SIIB, Mundra Customs, had sent an email to the Pre Shipment Inspection Agency (PSIA) M/s Tubby Impex Pvt. Ltd., New Delhi to provide details of inspection done by them. Further a summon was also issued to them requesting to appear on 13.06.2019 and provide relevant documents & images/videos for inspection. However, they never answered the Summons, but sent a letter dated 12.06.2019 received through Post, wherein it is stated that due to summer vacations no authorised personnel is in town and further it is not possible to travel to Mundra in short period of notice. It appeared that Certificate No. Tubby/2019/174368/T dt. 15.03.2019 issued by PSIA M/s Tubby Impex Pvt. Ltd. in this case is not correct & carried a misleading declaration.

(7) The para 2.32 of Foreign Trade Policy 2015-20 states the import policy for metallic waste & scraps states:-

"2.32 Import of Metallic Waste & Scrap

- (a) *Import of any form of metallic waste scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines shell, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in para 2.54 of the Handbook of Procedures."*

The mix metal Brass Scrap with impurities imported under cover of Bill of Entry No. 3109773 dt. 04.05.2019 was found to contain projectiles of fire arms/guns which is not allowed to be imported as per para 2.32 of the FTP 2015-2020. In view of the above, the 22.280 MT of Mix Metal Brass scrap valued at Rs. 27,31,149.24/- also appear liable for confiscation under section 111(d) of the Customs Act, 1962. M/s Suraj Recycling Pvt. Ltd., Jamnagar for their acts & omissions to make the imported goods liable for confiscation also appear to be liable for penalty under section 112(a) of the Customs Act, 1962.

(8) M/s Suraj Recycling Pvt. Ltd. vide letter dated 24.06.2019 has stated that in their factory at Jamnagar they melt the Mix Metal Brass scrap with impurities and use the same for manufacturing Brass product. If there is any other material as per the department view, the same may be mutilated at their cost. They have also waive the Show Cause Notice or personal hearing in the matter. M/s Suraj Recycling Pvt. Ltd. vide another letter dated 30.07.2019 has again waived the Show Cause Notice & personal hearing. They have stated that pending further enquiry & action against PSIC Agency the goods may be released taking lenient view.

**Discussion & Findings:**

(9) I find that the with the reasonable belief that the goods were liable for confiscation under section 111 of the Customs Act, 1962 as the goods contained projectiles in the import consignment which are parts of cartridges & not allowed to be imported as per para 2.32 of the FTP 2015-20 & hence were seized on 20.06.2019 under a Panchnama under section 110 of the Customs Act, 1962. I find that para 2.32(a) of the FTP 2015-20 clearly state that import of any form of metallic waste, scrap containing any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in para 2.54 of the Handbook of Procedures is not allowed. It is undisputed that the projectiles which is front portion of cartridge were found in the scrap. Though these did not contain propellant/gun powder etc. & were not live full cartridge/shell but were part of empty cartridge. Hence, were not allowed to be imported under para 2.32(a) of FTP 2015-20. The Director of importer in his statement dt. 10.06.2019 recorded under Section 108 of the Customs Act, 1962 has admitted this & shown their readiness to crush it or mutilate it before clearance.

(10) I therefore hold that 22.280 MT of Mix Metal Brass Scrap with impurities containing the projectile of cartridges (part of cartridge) is liable for confiscation in terms of Section 111(d) of the Customs Act, 1962. I also hold that M/s Suraj Recycling Pvt. Ltd., Jamnagar are also liable for penalty under section 111(d) of the Customs Act, 1962 for their acts & omissions for import of goods liable for confiscation under Section 111 of the Customs Act, 1962.

(11) I find that M/s Tubby Impex Pvt. Ltd., C-54, 3<sup>rd</sup> Floor, South Extension Part-2, New Delhi have given an incorrect Pre Shipment Inspection Certificate & had wrongly certified that consignment does not contain any type of shells, cartridges, either used or otherwise, whereas the projectile (part of cartridge) were in fact found in the imported Brass Scrap. However, the waiver of Show Cause Notice and also personal hearing by M/s Tubby Impex Pvt. Ltd., New Delhi is not on record. Hence, their case for imposition of penalty will be dealt with after the issuance of the Show Cause Notice to them for penalty & after granting of personal hearing to them in this context. The case of the PSI Agency M/s Tubby Impex Pvt. Ltd. will be dealt with later separately.

(12) In view of the above, I pass the following Order:

**ORDER**

- (1) I order the mutilation/crushing of the projectiles of cartridges by roller at the expense of the importer to the satisfaction of the DC, SIIB in writing, before delivery.
- (2) I order the confiscation of the 22.280 MT of Mix Metal Brass Scrap with impurities containing front portion of cartridges (projectile) & valued at Rs. 27,31,149.24/- in terms of Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated

goods on payment of fine of Rs. 3,75,000/- (Rupees Three Lakh & Seventy Five Thousand Only) in terms of Section 125 of the Customs Act, 1962.

- (3) I also impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) on M/s Suraj Recycling Pvt. Ltd., Plot No. 565/66, GIDC Phase-II, Dared, Jamnagar, Gujarat under Section 112(a)(i) of the Customs Act, 1962.

The fine, penalty be paid forthwith. I have taken a lenient view while imposing fine & penalty due to the fact that Bill of Entry has been filed on 04.05.2019 & the demurrage & container detention is involved. The case of issuance of penalty on M/s Tubby Impex Pvt. Ltd., New Delhi (PSIC Agency) will be taken up separately on issuance of Show Cause Notice to them.



(Prashant Kaduskar) 7/8/19  
Additional Commissioner,  
Mundra Customs

To  
M/s Suraj Recycling Pvt. Ltd.,  
Plot No. 565/66, GIDC  
Phase-II, Dared, Jamnagar, Gujarat.

Copy to:

- (1) The Principal Commissioner of Customs, Custom House, Mundra
- (2) The Assistant Commissioner of Customs (RRA), Custom House, Mundra
- (3) The Deputy Commissioner of Customs (SIIB), Custom House, Mundra
- (4) The Deputy Commissioner of Customs (Disposal), Custom House, Mundra
- (5) The Deputy Commissioner of Customs (EDI), Custom House, Mundra
- (6) Guard file