



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/48-926/Adj/Gr.V/Shreea/MCH/2019-20
B	Order-in-Original No.	MCH/ADC/PSK/64/2019-20
C	Passed by	Shri Prashant Kaduskar Additional Commissioner of Customs, Custom House, Mundra
D	Date of Order	09.09.2019
E	Date of Issue	13.09.2019
F	SCN NO. & Date	SCN waived vide request letter dated 04.09.2019
G	Noticee / Party / Importer / Exporter	M/s Shreea Visionary Solutions Private Limited, A-202, Pramukh Arcade-2, Reliance cross road, Kudasan, Gandhinagar, Gujarat-382421

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
14953
13 SEP 2019
Custom House, Mundra

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 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिनों 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/-

रुपये का टिकट लगा होना चाहिए और इस के साथ निम्न लिखित 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 प्रतियाँ 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 मंद 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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदिके 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: M/s Shreea Visionary Solutions Private Limited, A-202, Pramukh Arcade-2, Reliance cross road, Kudasan, Gandhinagar, Gujarat-382421 holding IEC Code No. ABBCS3605E has filed B/E No. 4589087 dated 21.08.2019 and have mis-declared the cargo.

BRIEF FACTS OF THE CASE

M/s Shreea Visionary Solutions Private Limited, A-202, Pramukh Arcade-2, Reliance cross road, Kudasan, Gandhinagar, Gujarat-382421, holding IEC Code No. ABBCS3605E (herein after referred to as Importer), filed Bill of Entry No. 4589087 dated 21.08.2019 for goods declared as Road Sweeping Machine (Model No. ERC3) alongwith sweeping brush, rubber front of nozzle, medial leather mudguard. The goods were classified under Custom Tariff Item 84791000. The value of the goods is Rs 24,91,470.61/-.

2. The Bill of lading no. KMTCTA04137865 dated 26.07.2019 declare the description of goods as Road Sweeping Machine & Spare parts. The gross weight is mentioned as 1893.4 kgs. The freight is said to be prepaid. The HS code mentioned is 84798999. The port of loading is Qingdao, China. The country of origin certificate no. B194300027790431 is dated 26.07.2019 issued by Changsha Customs declare the country of origin as The People's Republic of China.

3. The Shandong Yano Import and Export Co. Ltd, Shan Country, Xinai Vehicle Limited Liability Company, Heze City, Shangdong Province, China has raised the invoice no YANOSV1907120201 dated 12.07.2019 for CIF USD 34,676/- The description of goods is mentioned as Road Sweeping Machine (Model No. ERC3) and other goods declared to be spare parts of Brush Motor, Travel Motor, Controller, Sweeping Brush, rubber front of nozzle, medial leather mudguard. The corresponding packing list mention the gross weight as 1893.40 kgs, net weight 1868 kgs and that goods are in 2 pallets.

4. On examination, it was revealed that goods has more a character of lorry or mini truck, equipped with various devices/accessories to perform function related to road sweeping whereas the importer has declared it as a road sweeping machine (Model No. – ERC3). The goods appeared to be classifiable under Custom Tariff Heading 8705 of Custom Tariff not under Custom Tariff Item 84791000 as has been done. The Custom tariff Heading is for special purpose motor vehicle other than those principally designed for the transport of persons or goods (e.g. Brakedown lorries, Mobile workshops, Fire fighting vehicles, concrete mixer lorries, road sweeper lorries, spraying lorries) attracting Basic Custom Duty @ 10%. The commercial invoice no. YANOSV1907120201 dated 12.07.2019 alongwith Road Sweeping Machine Model No. ERC3 mention item viz Brush Motor, Travel Motor, Controller for Hydraulic system, for fan motor, for cleaning pump, for travel motor, sweeping brush, rubber front of nozzle and medial leather for mudguard. The invoice nowhere mention words “ Spare parts of”. Thus words spare parts do not anywhere occur in invoice and packing list at all. Hence, it appeared that the goods imported are more appropriately classifiable as special purpose motor vehicle for road sweeping in semi knocked down condition (SKD) & is not a mere Road Sweeping Machine and spare parts as declared. The goods appear to be misdeclared for description.

5. The Notification No. 18/2015-2020 dated 12.07.2018 of Ministry of Commerce Industry, Department of Commerce, signed by DGFT provides for import policy condition 2 to chapter 87 of ITC(HS) 2017 Schedule 1 (import policy) as under:-

It provides for policy condition 2(II)(d) of the Chapter 87 which states that import of new vehicles shall be permitted only through the following Customs ports:

Seaports: - (i) Nhava Sheva, (ii) Mumbai, (iii) Kolkata, (iv) Chennai, (v) Ennore, (vi) Cochin, (vii) Kattupalli, (viii) APM Terminals Pipavav, (ix) Krishnapatnam, (x) Vishakhapatnam;

Airports: - (xi) Mumbai Air Cargo Complex, (xii) Delhi Air Cargo, (xiii) Chennai Airport; and

ICDs: - (xiv) Telegaon Pune, (xv) Tughlakabad & (xvi) Faridabad.

6. Thus it appear that goods valued at Rs 24,91,470.61/- have been misdeclared for description as road sweeping machine (Model no. ERC3) and spare parts and have been incorrectly classified under Custom tariff item 84791000 as machine & under custom tariff item 84799010 as various spare parts. Instead the goods appear rightly describeable as Road sweeping lorry (in semi knocked down condition) and classifiable under custom tariff item 87059000. Thus, the Road sweeping lorry appear to be liable for confiscation under section 111(m) of the Customs Act, 1962 for misdeclaration of description.

7. The Mundra seaport also is not a permitted Seaport through which a vehicle can be imported as per policy condition 2(II)(d) of capter 87 of ITC(HS) 2017 as amended by Notification no 18/2015-2020 dated 12.08.2018. Hence the said goods should not have been imported at Mundra port. The imported Road Sweeping lorry classifiable under Custom Tariff Item 87059000 and valued at Rs 24,91,470.61/- also appear to be liable for confiscation under section 111(d) of the Customs Act, 1962.

7.1 The importer M/s Shreea Visionary Solutions Private Limited, Gandhinagar, are also liable for penalty under Section 112(a)(i) of the Customs Act, 1962 for their acts and omissions making the goods liable for confiscation under section 111(d) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN:-

8. The importer M/s Shreea Visionary Solutions Private Limited, Gandhinagar, vide their letter dated 04.09.2019 addressed to Additional Commissioner has stated that they are first time importer of subject cargo. The cargo is road sweeping machine. As per their supplier HSN was 8479 and they have checked HSN for road sweeping machine and hence they had mentioned the HSN code 8479 considering end use as road sweeping. They waive their right of a show cause notice and personal hearing.

DISCUSSION & FINDING

9. I have gone through the details of documents like Bill of Lading, invoice, country of origin certificate etc. I have also gone through the letter from importer M/s Shreea Visionary Solutions Private Limited, Gandhinagar, waiving the Show Cause Notice & Personal hearing and hence I proceed to decide the case.

10. I find that on Physical examination of goods by Customs staff in the Docks, it has been revealed that the goods are a Mini Truck or Special Vehicle for Road Sweeping and that the declared description of "Road Sweeping Machine" is not correct and is misleading. It has also been recommended by the Customs Staff in Docks that the goods being Road Sweeping Lorries, the goods needs to be classified under Custom Tariff heading 8705.

I find that the CTH 8479 includes the small pedestrian directed motorised apparatus for maintenance of roads (e.g. Sweepers and White line painters). In the subject case, it is not a pedestrian directed motorised apparatus but a lorry or a truck for road sweeping. It is not a mere machine for road sweeping but a vehicle fitted with sweeping brush, controller, brush motor, controller for hydraulic system, controller for motor and controller for cleaning pump. Thus, it is evident on physical examination that the impugned goods are Road Sweeping lorry/truck in SKD condition. The vehicles are classified under chapter 87 of the Customs Tariff of India. The Customs Tariff Heading reads:-

“
8705 *Special purpose motor vehicles, other than those principally designed for the transport of persons or goods (for example Breakdown lorries, Crane lorries, fire fighting vehicles, concrete-mixer lorries, road sweeper lorries, spraying lorries, mobile workshops, mobile radiological units*

8705 1000 - Crane lorries
8705 2000 - Mobile drilling derricks
8705 3000 - Fire fighting vehicles
8705 4000 - Concrete-mixer lorries
8705 9000 - Other.
”

The classification of subject goods obviously would be under Custom Tariff Item 87059000. The basic custom duty under Custom Tariff Item 87059000 is 10% (2.5% more than the classification under CTH 8479). I also significantly note that though the Bill of Entry use the words spare parts of (Road Sweeping Machine) Brush motor 0.09KW and 1PC controller . The commercial invoice merely describe it as "Brush Motor 0.09 KW and 1PC controller". The word spare part is significantly absent. Again the Bill of Entry use the word Spare parts of (Road Sweeping Machine) Travel Motor 7.5 KW. The related entry in commercial invoice dated 12.07.2019 reads "Travel Motor 7.5 KW". Similar thing is repeated in case of controller for hydraulic system, controller for fan motor, controller for cleaning pump and controller for travel motor. The word "Spare parts of" does not at all occur in the commercial invoice raised by the supplier M/s Shandong Yano Import and Export Co. Ltd. The attempt for misdeclaration of description is obvious and evident.

11. I hold that declared description of Road Sweeping Machines & Spare parts is false and misleading. I hold that correct description would be Road Sweeping Lorry in SKD condition. Consequently the declared classification under Custom Tariff Item 84791000 and 84799010 (for so called spare parts) is incorrect and correct classification would be 87059000 – Other (Special Purpose Motor Vehicle). The HSN explanatory notes also support this classification as lorries used for cleansing streets, gutters, airfield runways e.g. sweepers are covered under this Tariff item. Thus I hold that impugned misdeclared Road cleaning lorry in SKD condition is liable for confiscation under section 111(m) of Customs Act, 1962.

11.1 I also hold that by virtue of notification no 18/2015-2020 dated 12.07.2019 of Ministry of Commerce Industry, Department of Commerce, new vehicles are permitted to be imported only at following Customs Seaports:

(i) Nhava Sheva, (ii) Mumbai, (iii) Kolkata, (iv) Chennai, (v) Ennore, (vi) Cochin, (vii) Kattupalli, (viii) APM Terminals Pipavav, (ix) Krishnapatnam, (x) Vishakhapatnam;

The name of Mundra Seaport does not figure in the said notification where new vehicles are permitted to be imported under policy condition 2(II)(d) of chapter 87 of ITC(HS) 2017, Schedule 1(import policy). Hence impugned Road Sweeping lorry in SKD condition valued at Rs 24,91,470.61 is liable for confiscation under section 111(d) of the Customs Act, 1962.

12. I also hold that for the act and omission to make the impugned Road Sweeping lorry in SKD condition, liable for confiscation under section 111 of the Customs Act, 1962, the importer M/s Shreea Visionary Solutions Private Limited, Gandhinagar, is liable for penalty in terms of section 112(a)(i) of the Customs Act, 1962.

12.1 In view of above, I pass the following order:-

ORDER

- (i) I reject the declared description of Road Sweeping Machine and spare parts of Road Sweeping Machine. I order that the correct description of the imported goods under Bill of Entry 4589087 dated 21.08.2019 would be “Road Sweeping Lorry in SKD condition”
- (ii) I reject the declared classification for road sweeping lorry in SKD condition under Custom Tariff Heading 84791000 and also as spare parts of road sweeping machine under 84799010. I order the imported “Road Sweeping Lorry in SKD condition” be classified under Custom Tariff Item 87059000.
- (iii) I order the confiscation of 1 no. of “Road Sweeping Lorry in SKD condition” valued of Rs 24,91,470.61/- under section 111(d) and 111(m) of the Customs Act, 1962. However, I allow the redemption of confiscated goods on payment of redemption fine of Rs 5,00,000/- (Rupees Five lakhs only) in terms of section 125 of the Customs Act, 1962.

- (iv) I also impose the penalty of Rs 2,25,000/- (Rupees Two lakhs and twenty five thousands only) on M/s Shreea Visionary Solutions Private Limited in terms of section 112(a)(i) of the Customs Act, 1962.
- (v) I order that goods covered under Bill of Entry 4589087 dated 21.08.2019 be re-assessed under Customs Tariff Item 87059000 and appropriate duty (differential duty) be recovered on such re-assessment.


(Prashant Kaduskar)
Additional Commissioner, 13/9/2019
Custom House, Mundra

F.No. VIII/48-926/Adj/Gr.V/Shreea/MCH/2019-20

Date: 13.09.2019

To,

M/s Shreea Visionary Solutions Private Limited,
A-202, Pramukh Arcade-2, Reliance cross road,
Kudasan, Gandhinagar, Gujarat-382421

Copy to:

- 1) The Principal Commissioner, Custom House, Mundra.
- 2) The Assistant / Deputy Commissioner (DE), Custom House, Mundra.
- 3) The Assistant / Deputy Commissioner (RRA), Custom House, Mundra.
- 4) The Assistant / Deputy Commissioner (TRC), Custom House, Mundra.
- 5) The Assistant / Deputy Commissioner (EDI), Custom House, Mundra.
- 6) M/s. Shree Malan Shipping - CB.
- 7) Guard File.