



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/48-1435/Mingchen/Gr.V/MCH/19-20
B. Order-in- Original No.	:	MCH/ADC/AK/15/2020-21
C. Passed by	:	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	:	21.05.2020/21.05.2020
E. Show Cause Notice No. & Date	:	VIII/48-1435/Mingchem/Gr.V/MCH/2019-20 dated 13.03.2020
F. Noticee(s) /Party/ Importer	:	M/s Unnati Cargo, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra-370421
G. DIN	:	<b>DIN – 20200571MO00007B1B6C</b>

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**

**7<sup>वीं</sup> मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, 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.”**

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 जापान 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.:-** Show Cause Notice F.No.VIII/48-1435/Mingchem/Gr.V/MCH/2019-20 dated 13.03.2020 issued to M/s Unnati Cargo, Custom Broker, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra & others

## BRIEF FACTS OF THE CASE

M/s. Mingchen Plastic Technology Private Limited, 507, Tower B, Pioneer Urban Square, Sector-62 Gurugram, Gurgaon, Haryana-122001, India holding IEC No. AAMCM8029Q (hereinafter referred as the "Importer") had filed Bill of Entry No. 5666874 dated 13.11.2019 for clearance of Moulding Machine - Model No: PD600, Moulding Machine - Model No. - YC220, Grinder, Griner Knife Set, Charging Basket, Vertical Mixing Bucket, Horizontal Mixing Bucket, Cooling Tower, Suction Machine, Compressor, Vacuum Cleaner, PU Tube, Scale, Mould, Small Hoisting Gear, Working Table & PP Plastic particles through its Customs Broker M/s Unnati Cargo, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra (hereinafter referred as the "Customs Broker"/"Noticee"). The Bill of Lading No. COAU7086161790 dated 21.10.2019 declared the Gross Weight as 38020.00 Kg and port of loading mentioned is Shekou, China. The invoice No. MC1901 dated 25.10.2019 declared total invoice value as USD 14,243/-.

1.1 During the course of assessment, it appeared that the item No. 1 & 2 (Injection Moulding Machines) falling under CTH 84771000 attract ADD @29% of the landed cost, if the same are having clamping force "equal to or more than 40 Tonnes and equal to or less than 1000 Tonnes" if imported from China under Notification no 57/2015-Cus(ADD) dated 04.12.2015. It was observed that the importer, in the Bill of Entry filed through its Customs Broker, M/s Unnati Cargo, neither imposed the ADD in self-assessment nor did they declare the clamping force of the moulding machines. The importer was asked to declare the clamping force of the Moulding Machines being imported through the BE no. 5666874 dated 13.11.2019, in reply to which the importer submitted, through its CB M/s Unnati Cargo, that the Tonnage of the Machines were 600 Tonnes and 220 Tonnes respectively. From their submission, it appeared that the goods i.e. the moulding machines imported through the above BE attracted ADD @ 29% of the landed cost under the provisions of Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus (ADD) dated 04.12.2015, under serial no 1 of the table of the said notification.

1.2 It further appeared that the values declared by the importer were grossly undervalued in the documents and the Bills of Entry filed by them through its CB M/s Unnati Cargo. The value of the moulding machines as declared by the Importer, were USD 6318/- (Rs 460013.58) for item no 1 and USD 2890/- (Rs 210420.90) for item no 2. It was seen that the weights of the machines, as per the packing list uploaded by the importer was 24000 kgs and 10000 kgs respectively. The BE was ordered for first check examination as per request of the importer. It appeared that the importer, through its CB M/s Unnati Cargo, submitted that as they were having long term relationship with the supplier and that they had been given best prices and they further submitted letter dated 12.12.2019 and enclosed a transaction advice, proforma invoice and commercial invoice. It further appeared that as per the second invoice (Parallel Invoice No. MC1901 dated 25.10.2019) submitted by the importer, through its CB M/s Unnati Cargo, the actual invoice price for the item No. 01 & 02 is as mentioned below.

S. No.	Item No			Price Declared in BE/uploaded Invoice No. MC 1901 dated 25.10.2019	Price as per Invoice Without Discount (under Parallel Invoice No. MC1901 dated 25.10.2019)

1	01 (Model No. PD600 Moulding Machine)		USD 6,318/-	USD 43,970/-
2	02 (Model No. YC220 Moulding Machine)		USD 2,890/-	USD 21,717/-

From the above, it appeared that the importer, representing through its CB M/s Unnati Cargo, had uploaded one invoice in the e-sanchit having number MC1901 dated 25.10.2019 showing the value of the consignment as USD 14243/- and submitted another invoice having same number showing the value of the goods as USD 70,722/- with a discount of USD 56,479/- on the invoice price.

1.3 It further appeared that as per the examination report of the goods and the Chartered Engineer certificate No.ELBI/Mundra/20/45 dated 22.01.2020 & certificate No. ELBI/Mundra/20/46 dated 23.01.2020 issued by M/s ELBI Consultancy (India) Pvt. Limited, the goods mentioned at Sr. No. 1, 2, 3, 5, 6, 7, 8, 9, 15, 16 & 17 were found to be used second hand machinery/capital goods and the goods mentioned at Sr. No. 4, 10, 11, 12 ,13 & 14 are old and unused, instead of New as declared by the importer in the Bill of entry filed by them. The value of these items as per the parallel invoice produced by the importer, through its CB M/s Unnati Cargo, was USD 70,277/- C&F.

1.4 It appeared that the importer attempted to evade the Customs duty by grossly undervaluing the goods and had also attempted to evade the Anti Dumping duty applicable @29% of the landed cost in terms of Notification no 57/2015-Cus(ADD) and had also mis-declared the old items as new and attempted to import the second hand goods, without following the procedures as stipulated by the FTP 2015-20 under para 2.31 as well as the procedure as stipulated by the Board vide circular no. 493/124/86-Cus, VI dated 19.11.1987 and 25/2015 dated 15.10.2015.

1.5 It appeared that the case of the importer M/s. Mingchen Plastic Technology Private Limited, was adjudicated vide OIO no. MCH/ADC/AK/105/2019-20 Dated 03.02.2020 and the values declared by the importer under Rule 12 of the Customs Valuation (Determination of value of the imported Goods) Rules, 2007 were rejected and it was held that the value of the goods be taken as USD 70722/- for the purpose of assessment in terms of Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (as amended time to time) in the Order-in Original issued in the matter. It was held that that Anti dumping duty @ 29% under the provisions of Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus (ADD) dated 04.12.2015 under serial no 1 of the table of the said notification, be imposed on the goods at Sr. no. 01 & 02 at the time of assessment. It was held that the goods mentioned at Sr. no 01 to 17 totally valued at Rs. 50,59,944/- were liable for confiscation under Section 111(m) of the Customs Act, 1962 was ordered and the importer was given an option to redeem the confiscated goods on payment of redemption fine of Rs. 10,00,000.00 (Rupees Ten Lakh only) in terms of Section 125 of the Customs Act, 1962. A penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) was also imposed on M/s. Mingchen Plastic Technology Private Limited, under Sec 112(a) of the Customs Act, 1962. A penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) was also imposed on M/s. Mingchen Plastic Technology Private Limited, under Section 114AA of the Customs Act, 1962.

1.6. It appeared that M/s Unnati Cargo, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra having License no. ASCPK1243RCH002 is the Customs broker for the importer, M/s Unnati

Cargo are working under the Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018. They have been entrusted with certain obligations which have been detailed in Rule 10 of the said Regulations. The relevant portion of the regulations was as under;

“ 10. Obligations of Customs Broker.— A Customs Broker shall —

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.

1.7. It appeared that with the advent of the self-assessment era in respect of imports, the responsibility of the importer as well as its Customs Broker have increased manifold and filing of all the true, correct and complete declarations and related documents is their prime responsibility. They were also bound to check the applicability of anti-dumping duty or any other duties on the goods being imported by them. It is also pertinent to mention that the importer in the present case was a foreign based firm and the responsibility of the Customs Broker to follow the Act and the procedures was much higher in this case. It further appeared that M/s Unnati Cargo have failed to advise its client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof and they have failed to advise their client regarding applicability of the Anti-Dumping Duty on the goods imported by them and had filed the Bill of Entry, on behalf of the importer, without applying the Anti Dumping Duty and failed to estimate the value of the new/old goods of nearly 34000 Kg and filed the Bill of Entry without verifying the factual value of the goods. The applicability of the ADD has been noticed by the Department during assessment and the importer had disclosed the clamping force of the Moulding machines only on being questioned by the Department through Queries raised. In addition to the failure to correctly advise their client M/s Unnati Cargo has also failed to discharge their duties with utmost speed and efficiency without delay.

1.8. Thus, it appeared from the above that M/s Unnati Cargo had abetted in the attempt of the importer to evade the Anti Dumping Duties on the imported goods, abetted in the attempt to evade the Customs duty by grossly undervaluing the goods and clearance of second hand goods in the guise of New, making the goods liable for confiscation under the provisions of Section-111(m) of the Custom Act 1962, and thus M/s Unnati Cargo appeared to had rendered themselves liable for the penal action under the provisions of Section-112(a) of the Customs Act, 1962.

2. Therefore, a Show Cause Notice F.No.VIII/48-1435/Mingchem/Gr.V/MCH/2019-20 dated 13.03.2020 was issued whereby Custom Broker, M/s Unnati Cargo, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra were called upon to show cause in writing to the Additional Commissioner of Customs, having office at Office of the Principal Commissioner, Custom House, 5 B, Port User Building, Mundra Port, Mundra-Kutch, as to why:

(i) Penalty should not be imposed on them under section 112(a) of the Customs Act, 1962 for

abetment of their act in clearance of the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 (as amended time to time) read with Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018.

### **DEFENCE REPLY AND PERSONAL HEARING**

3. The authorized representative of the noticee, Shri Dilipsinh Chavda, in response to this office letter dated 27.04.2020, appeared for Personal Hearing on 08.05.2020 at 11.00 AM, wherein he said that he was aware that the product is required some technical characteristics for Anti Dumping duty, however they/he did not file Bill of Entry with specification. He further stated that he has nothing more to add. Further, vide letter dated 06.05.2020, submitted to the department on 08.05.2020, they denied the allegations and averments leveled in the notice and further submitted that before filing the bill of entry, they had prepared the check list and had got the approval-cum-confirmation from importer as regard to correctness of the particulars entered by them in the check list. They have further submitted that show cause notice nowhere rely upon any evidence that they had any prior knowledge about alleged undervaluation or existence of more than one invoice for one and the same goods at the time of filing bill of entry. Hence, the allegation regarding abetment is entirely baseless and cannot be sustained in any eventuality. Further, In support of their submissions, they have quoted the case laws as follows;

- i. WCI Shipping Pvt. Ltd., v/s. Commissioner of Customs, Chennai, 2020-TIOL-667-CESTAT-MAD.
- ii. P. P. Dutta v/s Commr. of Cus. & C.Ex., Ghaziabad, 2014 (313) E.L.T. 351 (Tri-Del)
- iii. Dipankar Sen v/s Commissioner of Customs, Kolkata, 2003(159) E.L.T 260 (Tri-Kol)
- iv. Pfizer Ltd. v/s Commr. of Cus., Air Cargo Complex, Mumbai, 2001 (131) E.L.T. 251 (Tri.-Mumbai)
- v. Sahil International v/s Commr. of Cus. (Import), Nhava Sheva, 2019 (369) E.L.T. 1397 (Tri-Bom)

By relying on the above facts and decisions, they submitted that there was no failure on their part to properly advise the importer about the law and procedures, including those relating to anti-dumping duty on injection molding machines. On the contrary, the initiative taken by them in requesting for first check examination ought to be appreciated. In view of the above, they submitted that they are not liable to any penalty under the provisions of Customs Act, 1962 and the notice may be dropped.

### **DISCUSSION AND FINDINGS**

4. I have carefully gone through the Show Cause Notice dated 13.03.2020, the written submission filed by the Noticee, oral submissions made at the time of personal hearing and the entire available records of the case . I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the Noticee M/s Unnati Cargo is liable for penalty under section 112(a) of the Customs Act, 1962 for abetment of their act in clearance of the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 (as amended time to time) read with Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018.

4.1 The facts of the case indicate that the Noticee M/s Unnati Cargo, holding Customs Broker License no. ASCPK1243RCH002, had filed a Bill of Entry No. 5666874 dated 13.11.2019 for clearance of two Injection Moulding Machines falling under CTH 84771000 and various other items falling under Chapter Heading 84, 85 and 39 of the first schedule of the Customs Tariff Act, 1975, on behalf of the importer M/s. Mingchen Plastic Technology Private Limited ( IEC No. AAMCM8029Q), Gurugram, Haryana-122001. I find that the invoice No. MC1901 dated 25.10.2019 uploaded by the said Custom Broker through e-sanchit does not reflect the correct values of the goods and the value of the impugned goods as declared in the aforesaid Bill of Entry filed by the Customs Broker were grossly undervalued with an attempt to evade the Customs duty as well as the Anti Dumping duty applicable @29% of the landed cost in terms of Notification no. 57/2015-Cus(ADD) dated 04.12.2015. Simultaneously, they also abetted in the attempt of the importer for clearance of second hand goods in the guise of New, without following the procedures as stipulated by the FTP 2015-20 under para 2.31 as well as the procedure as stipulated by the Board vide circular no. 493/124/86-Cus, VI dated 19.11.1987 and 25/2015 dated 15.10.2015. I find that the above discussed case was adjudicated vide O-I-O no. MCH/ADC/AK/105/2019-20 Dated 03.02.2020 whereby the values declared under Rule 12 of the Customs Valuation (Determination of value of the imported Goods) Rules, 2007 was rejected, the ADD @ 29% under Section 9A of the Customs Tariff Act, 1975, read with the Notification No. 57/2015-Cus(ADD) dated 04.12.2015 be imposed on the goods viz. moulding machines at the time of assessment, the goods totally valued at Rs. 50,59,944/- were held liable for confiscation under Section 111(m) of the Customs Act, 1962 with option to redeem the same on payment of redemption fine of Rs. 10,00,000/- under Section 125 of the Customs Act, 1962, and penalties of Rs. 5,00,000/- separately under Section 112(a) and Section 114AA of the Customs Act, 1962 respectively was imposed on the importer. Since, the Customs Broker M/s Unnati Cargo did not waive the issuance of Show cause Notice and opportunity of personal hearing, the instant Show Cause Notice dated 13.03.2020 is issued to them separately proposing penalty under Section 112(a) of the Customs Act, 1962 for abetment of their act in clearance of the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 (as amended time to time) read with Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14.05.2018

4.2 Now I proceed to decide the core issue of imposition of penalty on the Customs Broker M/s Unnati Cargo as proposed in the Show cause Notice. I find that in the instant case the Noticee is a holder of Customs Broker License no. ASCPK1243RCH002 and they have acted as the Customs Broker for clearance of goods under Bill of Entry No. 5666874 dated 13.11.2019 imported by M/s. Mingchen Plastic Technology Private Limited. In regard to proposal in SCN for penalty on them under Section 112(a) of the Customs Act, 1962 I find that Section 112(a) of the Customs Act, 1962, stipulates that any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act is liable to penalty as prescribed under the said Section. I further find that M/s Unnati Cargo have been granted licence under the Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018 and they have been entrusted work to operate as a

Customs Broker with certain obligations which have been detailed in Rule 10 of the said Regulations. The relevant portion of the regulations are as under;

“ 10. Obligations of Customs Broker.— A Customs Broker shall —

- (d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;
- (e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;
- (m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.

I have considered the submissions made by the Noticee and I find that in their defence submission they have mainly stressed that they had no any prior knowledge about alleged undervaluation or existence of more than one invoice for one and the same goods at the time of filing bill of entry. However, I find that while Customs brokers support traders by providing all necessary documentation and undertaking formalities related to cargo clearance, they are also expected to maintain Government interests by ensuring compliance with Customs and other regulatory requirements and the payment of appropriate duties and taxes. They are licensed to act as an intermediary for transaction of any business relating to the entry or departure of conveyances or the import or export of goods at customs stations. I find that with the advent of the self-assessment era in respect of imports, the responsibility of Customs Broker have increased manifold and in addition to their prime responsibility of filing of all the true, correct and complete declarations and related documents, they are also required to take precautions and are under an obligation to check and find out correctness of the declarations made by the importer while filing the Bill of Entry. I find that in the present case the importer was a foreign based firm and the responsibility of the Customs Broker to follow the Act and the procedures was much higher in this case. I find that in the instant case in the capacity of a responsible Customs Broker M/s Unnati Cargo have not only failed to advise their client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof whose requirements was mandatory to be followed. As such I also find that the Custom Broker filed the Bill of Entry without applying the ADD as the goods were “Injection Moulding Machine” , which has clamping force in it. Anti Dumping Duty is on the basis of Machine’s Clamping force. Once Injection Moulding Machine is classified by Customs Broker, it should immediately come into mind that the goods attract Anti Dumping Duty, which should be suggested by the Customs Broker to the foreign based importers. Further, he also failed to estimate the value of the new/old goods of nearly 34000 Kg and filed the Bill of Entry without verifying the factual value of the goods. I find that the applicability of the ADD has been noticed by the Department during assessment and the importer had disclosed the clamping force of the Moulding machines only on being questioned by the Department through Queries raised. In addition to the failure to correctly advise their client M/s Unnati Cargo has also failed to discharge their duties with utmost speed and efficiency without delay. Thus, I find that the Noticee have failed to discharge their obligation and have failed to fulfill requirements as enumerated in Para 10 (d), 10 (e) & 10 (m) of the Customs Brokers Licensing Regulations, 2018. I find that it is an established fact that there was gross

undervaluation in respect of goods declared in the Bill of Entry and M/s Unnati Cargo was fully aware of the undervalued transactions in the name of the importer and actively connived with the importer, in misdeclaring the value of the imported goods to customs by way of manipulating it through parallel invoices with an intent of huge evasion of Customs duty and also abetted in clearance of second hand goods in the guise of New, which made the goods liable for confiscation under the provisions of Section 111(m) of the Custom Act 1962. Therefore, I find that the said Customs Broker can not escape from the responsibility of mis-declaration of value of goods and said contravention on the part of the Custom Broker M/s. Unnati Cargo constitute an offence of the nature described under Section 112(a) of the Customs Act, 1962 and consequently they have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962 read with Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018.

4.3. I find that the Noticee in their written defence submissions quoted and have placed reliance on various case laws/judgements in support of their contention on some issues raised in the SCN. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same can not be extended to other case(s) without looking to the hard realities and specific facts of each case. However, I have carefully gone through the case laws quoted by the Noticee in their defence. I find that the case law in case of (i) WCI Shipping Pvt. Ltd., v/s. Commissioner of Customs, Chennai, 2020-TIOL-667-CESTAT-MAD is related to undeclared assorted electronic goods by resorting to mis-declaration of description, value and quantity, (ii) The case law in case of P. P. Dutta v/s Commr. of Cus. & C.Ex., Ghaziabad, 2014 (313) E.L.T. 351 (Tri-Del) is related to collaboration of the CHA in the alleged smuggling of goods by way of mis-declaration of description, quantity and value of goods, (iii) The case law in case of Dipankar Sen v/s Commissioner of Customs, Kolkata, 2003(159) E.L.T 260 (Tri-Kol)) is related to penalty on CHA under Section 114 of the Customs Act,1962 for filing of Shipping Bill for export of readymade garments under claim for drawback, (iv) The case law in case of Pfizer Ltd. v/s Commr. of Cus., Air Cargo Complex, Mumbai, 2001 (131) E.L.T. 251 (Tri.-Mumbai) is related to mis-classification of goods claimed as printed matter under Chapter 49.01 of Tariff whereas on examination by the Custom House it was found that it was not a printed matter but light pointers, (v) whereas the case law in case of Sahil International v/s Commr. of Cus. (Import), Nhava Sheva, 2019 (369) E.L.T. 1397 (Tri-Bom) is related to mis-classification of the goods declared as "JBL Ipod dock" under CTH 85182200 whereas upon examination, the goods were found to be "audio-systems" classifiable under heading no.85279100. In view of the above, I find that those decisions/judgements were delivered in different context and under different facts and circumstances, which cannot be made applicable in the facts and circumstances of this case. Therefore, I find that while applying the ratio of one case to that of the other, the decisions of the Hon'ble Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC)] has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper.



Again in the case of CC(Port), Chennai Vs Toyota Kirloskar[2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

5. In view of the above discussions and findings, I pass the following order-

**ORDER**

(i) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on M/s Unnati Cargo, Office No. 105, 1st Floor, Honeycomb CFS, Bharat CFS Zone, Mundra-370421 under section 112(a) of the Customs Act, 1962 for abetment of their act in clearance of the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 (as amended time to time) read with Customs Brokers Licensing Regulations, 2018 as notified vide Notification No. 41/2018-Customs (N.T.) dated 14th May, 2018.

6. This order is issued without prejudice to any other action which may be contemplated against the Customs Broker, Importer or any other person under 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)

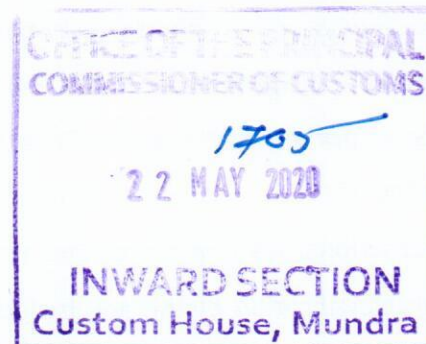
Additional Commissioner  
Custom House, Mundra

F. No. VIII/48-1435/Mingchen/Gr.V/MCH/2019-20

Dated: 21.05.2020

**BY SPEED POST/HAND DELIVERY**

To,  
M/s Unnati Cargo, (Customs Broker),  
Office No. 105, 1st Floor,  
Honeycomb CFS, Bharat CFS Zone,  
Mundra-370421



Copy to:

1. The Commissioner of Customs, Custom House, Mundra.
2. The Deputy/Assistant Commissioner (Gr. -V), Custom House, Mundra
3. The Deputy/Assistant Commissioner (RRA) Custom House, Mundra.
4. The Deputy/Assistant Commissioner (TRC) Customs House, Mundra
5. The Deputy/Assistant Commissioner (EDI), Customs House, Custom House, Mundra
6. The Deputy/Assistant Commissioner (CB), Custom House, Mundra
7. Guard File.

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