

 सत्यमेव जयते	सीमाशुल्कआयुक्तकाकार्यालय(एनएस-V) OFFICE OF COMMISSIONER OF CUSTOMS (NS-V) जवाहरलालनेहरूकस्टमहाउस, न्हावा-शेवा JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA ताल-उरण, जिला- रायगढ़, महाराष्ट्र-400 707 TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA- 400707	
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F. No.:S/26-Misc-16/2018-19/Gr.V/JNCH

Date of Order:20 /08/2025

S/10-Adj-143 /2025-26/Gr. V/JNCH

Date of issue:21 /08/2025

DIN No.:20250878NX0000177717

Passed by:Mazid Khan

Jt. Commissioner of Customs, (NS-V), JNCH, Nhava Sheva.

Order No.709 /2025-26/JC/Gr.V/NS-V/CAC/JNCH

Name of Party/Noticee: M/s. SP Associates (0515011428)

मूलआदेश

1. यह प्रति जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमा शुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमा शुल्क (अपील)नियमावली, 1982 के अनुसार फॉर्म सी.ए.1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूपमें 1.50 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इसपर न्यायालय फीस के रूपमें 1.50 रुपये का स्टॉप भी लगाया जायेगा जैसाकि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मदके अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्तिके संबंध में विवाद होने पर शास्तिका भुगतान करेगा।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Sheva, Tal :Uran, Dist : Raigad, Maharashtra - 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make 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.

Brief Facts of the Case

M/s. SP Associates (0515011428) (hereinafter will be referred to as 'Importer') having their registered address at 1/11959, Uldhanpur, Naveen Shahdara, Delhi 110032 filed Bill of Entry No. 8936939 dated 20.11.2018 (hereinafter referred to as 'the said Bill of Entry') for home consumption for import of "Old and Used Digital Multifunction Devices Canon with standard Accessories" (herein after referred to as "the goods") through their Customs Broker M/s. Shanti Shipping Agency Pvt. Ltd. The total assessable value of the goods was Rs.14,65,824/- (Rupees Fourteen Lakhs Sixty-Five Thousand Eight Hundred Twenty Four Only) and the declared duty is Rs. 2,63,848/-. The goods were examined on first check basis with 100% examination order.

2. Examination of the Goods:

The said Bill of Entry was selected for 100% examination. The scrutiny of the goods revealed the following:

1. The goods are second hand, old and used
2. There is no visible re-conditioning noticed
3. YOM not found/found and markings may be considered as per the CE Certificate (M/s. Gattini & Co.)
4. No catalogue/Drawing found
5. Residual life appears more than 5-7 years
6. The declared value appeared to be low may be taken as per CE certificate based on the condition of the goods however, the group may decide the value on the basis of contemporaneous import of similar/identical machines
7. Verified parts and accessories are standard
8. Goods examined under DC/Docks supervision
9. On examination, it has found that the goods are "old and used Digital Multifunctional devices".
10. The goods were inspected by Chartered Engineer M/s. Gattini & Co., vide Certificate No. CER/MUM/1819/008 dated 18.12.2018. The CE has suggested net assessable value (C&F) to be Rs. 25,51,426/-.

2.1 In terms of FTP 2015-20 para 2.31 (a) (ii) Photocopies machines/Digital Multifunction Print & Copying Machines of Import Policy for Second Hand Goods, the said are "Restricted" and Importable against authorization. The para 2.31 is reproduced here for ease of reference:

Import Policy for Second Hand Goods:

2.31 Second Hand Goods

S. No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
I	Second Hand Capital Goods		
(a)	i. Personal computers / laptops including their re-furbished / reconditioned spares ii. Photocopier machines/ Digital multifunction Print & Copying Machines iii. Air conditioners iv. Diesel generating sets	Restricted	Importable against authorization

However, the Importer/CB did not submit any such authorization for Import.

3. The Appraising Officer raised a query to the Importer to submit "DGFT Authorization and EPR Authorisation Certificate". In reply to the said query, the Importer submitted letter dated 27.12.2018 enclosing copy of EPR Authorization Cert. No. B- 29016(5A)/EPR/16/WM-III Division dated 21.04.2017. They further enclosed copy of application submitted to DGFT for authorization.

4. Relevant Legal Provisions:

- 4.1 To decide the issue of confiscation of the impugned goods in the present case, it will be appropriate to go through the relevant legal provisions. In this connection, I refer the excerpts of Section 46(4A) 112(a) & 111(d) of the Customs Act, 1962 which is reproduced as under: -
- a. *Section 46(4) of the Customs Act, 1962, the importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.*
 - b. *Section 111(d) of the Customs Act, 1962 provides for confiscation of any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*
 - c. *Section 112(a) of the Customs Acts 1962 provides for penalty for 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.*
 - d. *Section 128 of the Customs Act 1962 provides for if any person aggrieved by any decision or order passed under this Act by an officer of Customs lower in rank than a (Principal Commissioner or Commissioner of Customs) may appeal to the [Commissioner of (Appeals)] [within sixty days] from the date of the communication to him of such decision order.*
 - e. (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 4[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: Provided that where the proceedings are deemed to be concluded under the proviso to sub-section*

4.2 Penal Provisions:

SECTION 112. *Penalty for improper importation of goods, etc. — Any person, -*

(a) 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, or

.....

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

- 4.3 **Section 110A.** *Provisional release of goods, documents and things seized 15[or bank account provisionally attached] pending adjudication: --Any goods, documents or things seized 16[or bank account provisionally attached] under section 110, may, pending the order of the 17[adjudicating authority], be released to the owner 18[or the bank account holder] on taking a bond from him in the proper form with such security and conditions as the 17[adjudicating authority] may require.]*

5. The Importer vide their letter had requested for Personal Hearing and to avoid heavy demurrage and detention charges they further requested to warehouse the goods under subject B/E under Section 49 of the Customs Act, 1962. In view of the above, a Personal Hearing was granted to the Importer on 07.01.2019.

6. RECORDS OF PERSONAL HEARING:

6.1 Shri. Sanjeev Goel, Manager M/s. SP Associates earlier appeared for the Personal Hearing. He stated that they were not aware of the Policy provisions that Old and Used goods (other than Capital Goods) are not allowed for Import. He stated that they will not import such goods again and requested for clearance with higher fine and penalty. However, he did not agree for the re-export of the said goods.

6.2 **Personal Hearing in de novo Adjudication:** Pursuant to the order passed by the Hon'ble CESTAT vide Final Order No.A/85934-85935/2020 dated 25.11.2020 opportunity for personal hearing in

adjudication proceedings was granted to M/s. SP Associates on 30.06.2025. The personal hearing was attended by Shri. Manoj Chauhan, Advocate. Shri. Manoj Chauhan submitted a letter dated 30.06.2025 wherein following points were made:

- 1. The goods are pending since 2018 for de-novo adjudication and till date the revenue has not taken any stand and we have given various letters requesting for provisional release of the seized goods pending adjudication. Our clients are afraid of the losses who shall pay for the same.*
- 2. Our client has filed the Writ Petition in the Hon'ble High Court of Bombay vide Writ Petition No. 8055 of 2025 which is listed tomorrow i.e., 01.07.2025, requesting for provisional release of the goods as per the orders passed by the Hon'ble High Court of Bombay in Writ Petition (L) No. 10908 of 2024 for provisional release of the goods in identical imported goods. The copy of intimation is already served to the department.*
- 3. We would also like to state that the Custom House, Kolkata had released the similar/identical items provisionally by provisional release order dated 03.06.2025 for the identical goods imported vide Bill of Entry No.9693646 dated 25.04.2025 imported by M/s. Genuine Copier System seized by SIIB u/s 110 of the Customs Act, 1962 by Custom House, Kolkata and released in light of the Supreme court order dated 28.11.2024 in SLP (C) No.13560/2024 in the matter of M/s. Atul Automation Pvt. Ltd Vs. Commissioner of Customs (Port) &Ors, (2024) (S.C.). Hereto annexed and marked Exhibit-'A' Colly copy of the provisional release order and bill of entry dated 25.04.2025 and Exhibit-'B' copy of the Supreme Court order dated 28.11.2024.*
- 4. We would also state that the Custom House, Kolkata had taken the legal opinion regarding precedential value (Ratio Decidendi) of the judgment from the department's Senior Standing Counsel Shri. Kaushik Dey vide email dated 09.03.2025 and the Senior Counsel opined that similar importers of the same goods are also entitled to such relief of release of goods on such terms upon making appropriate application before the Department for Provisional release as denying provisional release to such importers on such terms will amount to discrimination.*
- 5. In view of the above we have already submitted our request vide letters dated 21.05.2025, 22.01.2025, 03.01.2025, 2.12.2024, 4.11.2024 and 8.10.2024 for provisional release of the goods. On behalf of our client, we have requested to release the impugned goods provisionally as per the orders passed by the Hon'ble High Court of Bombay in Writ Petition (L) No. 10908 of 2024 (Coram: B. P. Colabawala and Firdosh P. Poonawala, JJ.) in identical matters. The goods were released as per the terms and conditions such as on submission of 10% of Bank Guarantee equivalent to the total price of the imported goods and on payment of additional custom duty which has been accepted by this Custom House.*
- 6. We also request your goodself to issue the detention and demurrage waiver certificate w.r.t to the Notification No.26/2009 Customs (N.T.) dated 17.03.2009 Handling of Cargo in Customs Areas Regulations and Sea Cargo Manifest and Transhipment (Amendment) Regulations, 2018 Notification No.54/2019 - Customs (N.T.) dated 01.08.2019.*
- 7. In view of the discussion and submission on behalf of our client we request your goodself to release the goods provisionally as per the order passed by the Hon'ble Supreme Court of India in in SLP (C) No.13560/2024 in the matter of M/s. Atul Automation Pvt. Ltd Vs. Commissioner of Customs (Port) &Ors and save the importer from total losses.*

The above points made during the personal hearing has been taken on the record.

7. DISCUSSION & FINDINGS

7.1 I have carefully gone through the records of case. I find that the Importer, M/s. SP Associates (IEC No. 0515011428), having address at 1/11959, Uldhanpur, Naveen Shahdara, Delhi 110032, had filed Bill of Entry No. 8936939 dated 20.11.2018 for the Import of "Old and Used Digital Multifunction Devices Canon with Standard Accessories having assessable value of Rs.14,65,824/- and the declared duty payable was Rs. 2,63,848/-.

7.2 I find that the goods were examined 100% by the docks officer under DC/Docks supervision and JNCH empanelled Chartered Engineer. I find that the Appraising Officer raised a query to the Importer to 'submit DGFT Authorization and EPR Authorisation Certificate'. In reply to the said query, the Importer submitted letter dated 27.12.2018 enclosing copy of EPR Authorization Cert. No. B-

29016(5A)/EPR/16/WM-III Division dated 21.04.2017. They further enclosed copy of application submitted to DGFT for authorization. The matter was thereafter adjudicated by the then ADC/Gr-5 JNCH (NS-V) vide Order No. 1112/2018-19/ADC/Gr.V/NS-V/ JNCH dated 01.02.2019 without issuance of Show Cause notice after PH attended by Shri. Sanjeev Goel, Manager M/s. SP Associates. Aggrieved by the said OIO, both the Importer and the department had preferred appeal against the said order dated 01.02.2019 before Commissioner (A), JNCH. The Commissioner (Appeal), JNCH vide order-in-appeal no 783 to 786 (Gr.5)2019(JNCH)/Appeal-II dated 24.04.2019 had set aside Order dated 01.02.2019 and remanded the matter back to the original authority. The Importer preferred an appeal against said OIA dated 24.04.2019 before Hon'ble CESTAT which vide Final Order No. A/85934-85935/2020 dated 25.11.2020 referred the matter back to the Original Authority for deciding afresh for de-novo adjudication. Accordingly I take up the case for adjudication based on the records available before me.

7.3 I find that the Importer during personal hearing (PH) dated 30.06.2025 has requested for provisional release under u/s 110 of the Customs Act, 1962 in light of the Supreme court order dated 28.11.2024 in SLP (C) No.13560/2024 in the matter of M/s. Atul Automation Pvt. Ltd Vs. Commissioner of Customs (Port) & Ors, (2024)(S.C.). The Importer submitted a copy of EPR Authorization Cert. No. B-29016(5A)/EPR/16/WM-III Division dated 21.04.2017 for copying equipment (ITEW7). Thereafter, they have further submitted EPRA Registration certificate for producer B- 29016(5A)/EPR/16/WM-III Division dated 28.09.2023 for copying equipment: (ITEW7). However, Importer failed to submit DGFT Authorization in respect of the impugned imported goods which is a statutory compliance for the import of used and old digital multifunction printers/copying machines.

7.4. I find that the importer in his written submission has placed a reliance on the Hon'ble Supreme Court Judgement in the matter of M/s. Atul Automation Pvt. Ltd Vs. Commissioner of Customs (Port) & Ors, (2024)(S.C.). I observe that in the said case of M/s. Atul Automation Pvt. Ltd the goods had been seized by the Intelligence authorities under Section 110 of the Customs Act 1962 and later provisional release under section 110A was allowed. However, the facts of the instant case are different as the impugned goods have never been seized under section 110 and hence the ratio of judgement is not applicable in the present matter. In the regard, I rely on the Hon'ble Supreme Court Judgement in the matter of Al Noori Tobacco Products - 2004 (170) E.L.T. 135 (S.C.) where the Hon'ble Court observed that, -

"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

Further, the following words of Lord Denning in the matter of applying precedents have become locus classicus: 'Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid - the temptation to decide cases (as said by Cordozo) by 'matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.' Quote SC judgement

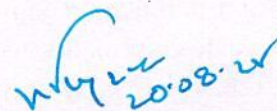
7.5 I find that it is an undisputed fact that the Importer had imported "Old and Used Digital Multifunction Devices Canon with Standard Accessories" (which are not Capital Goods) are restricted in terms of FTP 2015-20 para 2.31 (a)(ii) and are importable against authorization from DGFT, which the importer has failed to produce till date. Used digital multifunction printers/copying machines fall under the **restricted** category and require prior DGFT authorization and thus such goods are not permitted for import freely in India. I find that a DGFT authorization is mandatory, regardless of whether the equipment is refurbished or reconditioned. Since the goods under question has been imported without any authorization issued by the DGFT therefore, I am of the considered view that the impugned goods valued at Rs. 14,65,824/- are liable for absolute confiscation under Section 111(d) of the Customs Act, 1962 and I hold the same.

8. In view of the above I pass the following order:

Order

- (i) I reject the declared assessable value of the goods covered by Bill of Entry No. 8936939 dated 20.11.2018 under Rule 12 of the CVR, 2007 and re-determine the value as suggested by the Chartered Engineer i.e. Rs.25,51,426/- (C&F) i.e. Rs. 25,80,130/- (Rupees Twenty-Five Lakhs Eighty Thousand One Hundred Thirty) (CIF) under section 14(1) of Customs Act 1962 r/w Rule 9 of the CVR, 2007.
- (ii) I order for absolute confiscation of the subject goods "Old and Used Digital Multifunction Devices Canon with Standard Accessories" having re-determined total assessable value of Rs. 25,80,130/- (Rupees Twenty Five Lakhs Eighty Thousand One Hundred Thirty), covered under B/E No. 8936939 dated 20.11.2018 under Section 111(d) of Customs Act, 1962 read with Policy para 2.31(a)(ii) of the FTP 2015-20.
- (iii) I also impose a Penalty of Rs. 2,50,000/- (Rs. Two Lakh Fifty Thousand Only) on the Importer M/s. SP Associates, under Section 112 (a) of the Customs Act, 1962 for importing the said goods as the same are restricted in terms of FTP 2015-20 para 2.31 (a)(ii).

9. This order is issued without prejudice to any other action may be taken in respect of the goods in question and/or against the persons concerned or any other person. If found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.



(Mazid Khan)

Joint Commissioner of Customs,
Gr-V, NS-V, JNCH

To

M/s. SP Associates (0515011428)
1/11959, Uldhanpur, Naveen Shahdara, Delhi 110032

Copy to:

1. The Deputy Commissioner of Customs, CRAC, JNCH, Nhava Sheva
2. The Deputy Commissioner of Customs, Central Adjudication Cell, JNCH.
3. The Deputy Commissioner of Customs, Import Docks/Bond, JNCH
4. The Deputy Commissioner of Customs, EDI, JNCH
5. Notice Board
6. Office Copy