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[For departmental use]

[Exercise-01]

E-exercise



Drafting of  
Adjudication Order  
(Customs)

**Note:**

In this **e-Exercise Book**, the reader can check his understanding and knowledge about *Drafting of Adjudication Order in Customs*. Though all efforts have been made to make this exercise book error free, but it is possible that some errors might have crept into it. If you notice any errors or if you have any suggestion to improve this exercise book, the same may be brought to our notice through email on the e-mail address [rtinacenkanpur@yahoo.co.in](mailto:rtinacenkanpur@yahoo.co.in). This may not be a perfect **e-Exercise Book** and all are requested to assist us to make it better.

Sd/-  
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### Class Exercise No.1 – Customs

Before doing this exercise, trainee officer may carefully go through the contents of the note given below.

#### Note for the trainee officers:

- This exercise on drafting of adjudication order has been developed for the purpose of teaching newly recruited revenue officers and explains the basics of drafting of Adjudication Order.
- In this exercise, efforts have been made to draft adjudication order in terms of basics explained in e-book on drafting of Adjudication Order. Before attempting to draft an adjudication order, you must go through the E-books on “Drafting of Adjudication Order: Some Basics” and “Drafting of Show Cause Notice: Some basics”.
- It must be kept in mind that Adjudication Orders issued in the field are much more detailed one.
- After completion of the exercise, trainee officer may compare draft of adjudication order (AO) prepared by him/her with the model draft Adjudication Order given at the end of this exercise.

**Show Cause Notice**

C.No.....

Dt.....

Whereas, M/S XXX having IEC No. YYYY (hereinafter referred to as 'importer') filed a B/E No. 111111 dated 29.02.2016 under section 46 of Customs Act, 1962 for import of 100 mobile phones (unbranded) each having declared CIF value of 50 USD.

(2). Whereas, on the basis of an intelligence regarding mis-declaration of the imported goods by the importer, the SIIB officers intercepted the consignment imported vide B/E No. 111111 dated 29.02.2016 on 01.03.2016 when it was being removed from Customs Area after Out of Charge. On re-examination of the consignment by SIIB in the presence of the importer, it was found that the mobile phones were of Apple brand i-iphone of model 5S.

(3). Whereas, statement of Mr. AAA, proprietor of M/s XXX, was recorded on 01.03.2016 under section 108 of the Customs Act, 1962 wherein he, inter alia, stated as under:-

- (i) that he was a regular importer of mobile phones for the last three years and had a good compliance history;
- (ii) that in the past, Customs authorities had never detected any mis-declaration in the goods imported by him;
- (iii) that the shipper had wrongly sent the goods by mistake.

(4). Mr. AAA has accepted the examination report given by the SIIB officers and expressed his willingness to clear the consignment and pay the duty as worked out by the Customs authorities.

(5). Whereas, on the reasonable belief that the noticee had misdeclared the description of the imported goods as unbranded mobile phones instead of Apple brand i-phones model 5S with intent to evade payment of the Custom duty and thus, contravened the provisions of section 46 (4) of Custom Act, 1962 rendering the goods liable for confiscation under section 111 (m) of the Act ibid, the Customs officers seized the entire imported goods having total Assessable Value of Rs. 50,50,000/- (worked out on the basis of contemporaneous imports of identical goods) under section 110 of the Custom Act, 1962.

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(6). whereas, it appears that Apple Brand I-phone of model 5 S are regularly being imported by other importers at Air cargo complex, Delhi at the CIF value of USD 1000 per piece as evidenced by the following B/Es.

.....

(7). Whereas, it appears that the goods found on examination of the consignment are materially different from the declaration made by the importer in the B/E, the transaction value declared by the importer can not be accepted as true transaction value. Therefore, it is liable for rejection under the provisions of Rule 12 of the Customs Valuation (Import) Rules, 2007 issued under Section 14 of the Customs Act, 1962 and needs to be determined under Rules 4 of the Customs Valuation Rules, 2007 as USD 1000 per piece ( CIF Basis).

(8). Whereas, it appears that the importer has intentionally mis-declared the imported goods as explained above resulting in short payment of duty amounting to Rs. 10,07,475/- (as worked out in the Annexure to the SCN), the same is liable to be recovered from the importer under section 28 of the Custom Act, 1962 along with interest under section 28AA of the said Act.

(9). Whereas, it appears that the importer has contravened the provisions of section 46(4) of the Customs Act, 1962 by mis-declaring the value. Brand and model number of imported goods. Thus it appears that the seized imported mobiles having total Assessable value of Rs. 50,50,000/- is liable for confiscation under section 111(m) of the Customs Act, 1962.

(10). Whereas, it appears that the importer, by mis-declaring the description of the imported mobiles including its make and model, has contravened the provisions of section 46(4) of the Customs Act, 1962 with intent to evade payment of Customs duty and has rendered themselves liable for penal action under section 112(a) of the said Act.

(11). Now, therefore, M/s XXX, Delhi is hereby required to show cause to the Joint /Additional Commissioner, Air Cargo Complex, New Custom House, Delhi within thirty days of the receipt of this notice as to why;

- (a) The imported 100 mobiles having total Assessable Value of Rs. 50,50,000/- should not be confiscated under Section 111(m) of Customs Act, 1962 for having been imported in violation of the provisions of Section 46(4) of the said Act with intent to evade Customs duty totally amounting to Rs. 10,07,475/-.
- (b) The value of the imported mobiles declared in the B/E No. 111111 dated 29.02.2016 filed by him should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- (c) The value of imported goods should not be re-determined as Rs. 50,50,000/- in terms of rule 4 of the said Rules on the basis of the assessable value of identical goods imported during the relevant period;

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- (d) The differential Customs Duty total amounting to Rs. **10,07,475/-** (BCD Rs. 4,79,750/- + CVD Rs. 5,27,725/-) chargeable on the seized imported mobiles should not be demanded and recovered from him under Section 28 of the Customs Act, 1962;
- (e) The interest on the duty so paid in short should not be demanded and recovered under Section 28AA of the Act *ibid*.
- (f) A penalty should not be imposed under Section 112(a) of the Customs Act, 1962.

**(12).** The importer is also required at the time of showing cause, to produce all the evidences upon which he intend to rely in support of his defence. He should also indicate whether he wishes to be heard in person before the case is adjudicated.

**(13).** If no cause is shown against the action proposed to be taken or he does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided *ex-parte* on merits.

**(14).** present show cause notice is issued without prejudice to any other action that may be taken under any other provision of Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being in force.

**(15).** RUDs are enclosed as per the list of RUDs.

Encl: Annexure and List of RUDs

**Joint /Additional Commissioner  
New Customs House  
Delhi**

To

(i) M/s

List of relied upon documents:

1. ....
2. ....
3. ....

**Annexure**

**(I) Assessable value as per declaration of the Noticee:**

Total CIF value	= 100 x 50 USD	= 5000 USD.
CIF value in Rupees	= 5000 x 50	= Rs.2,50,000/-
	[1USD = Rs.50/-]	
Landing charges (@ 1% of CIF value)		= <b>Rs.2,500/-</b>
Assessable Value	= CIF value + Landing charges	
	= 2,50,000/,+2,500/-	= <b>Rs.2,52,500/-</b>
BCD @ 10% of A.V.	= 10% of 252500/-	= <b>Rs.25,250/-</b>
Value for calculation of CVD	= AV + BCD	
	= 252500+25250	= <b>Rs.2,77,750/-</b>
CVD @ 10%	= 10% of 2,77,750/-	= <b>Rs.27775/-</b>
Total duty	= BCD+ CVD	
	= 25250+27775	= <b>Rs.53,025/-</b>

**(II) Assessable Value as recalculated by Customs Authorities:**

Total CIF value	= 100 x 1000 USD	= 1,00,000 USD
	[CIF value as per B/E No. AAAA dated BBBB for identical goods]	
CIF value in Rupees	= 1,00,000/- x 50	= Rs.50,00,000/-
	[1 USD = Rs 50/-]	
Landing charges (@ 1% of CIF Value)		= Rs.50,000/-
Assessable value	= CIF + Landing charges	
	= 50,00,000 + 50,000	= <b>Rs.50,50,000/-</b>
BCD @10% of A.V.	= 10% of 50,50,000/-	= <b>Rs.505000/-</b>
CVD @10% of (A.V.+ BCD)	= 10% of (50,50,000 + 5,05,000)	
		= <b>Rs.5,55,500/-</b>
Total duty	= BCD + CVD	
	= 5,05,000+ 5,55,500/	= <b>Rs.10,60,500/-</b>

**(III) Calculation of Differential Customs Duty:**

Differential duty	= Rs.10,60,500/ - Rs.53,025/-
	= <b>Rs.10,07,475/-</b>

**Now, assume that you are working as Joint Commissioner and the SCN is to be adjudicated by you.**

1. In their written submission dated \_\_, the Importer submitted that they have been an reputed importer of mobile phone and have never made any wrong declaration. The goods were properly examined by the Customs officer and given out of charge. It was a mistake committed by the overseas supplier who wrongly shipped the consignment. They do not want to fight with the Department and are ready to pay the differential duty demanded by the department. However, we request that no penalty should be imposed as it was the mistake of the supplier, who wrongly shipped the goods. He also enclosed a letter purportedly written by supplier admitting their mistake. He further submitted that they are established importer and have a long history of compliance. He requested for adjudication of SCN on top priority and requested for personal hearing.
2. Personal hearings were held on \_\_\_\_\_. Personal hearing was attended by the authorized representative of the party. He reiterated whatever said in the written submission. He requested for early decision in the matter and also requested for lenient view with regard to imposition of penalty in the matter.
3. In the light of written submission and record of personal hearing as mentioned above, **draft the adjudication order, particularly the part of the adjudication order containing discussion, findings and order. Brief facts of the case, written submission and record of personal hearing need not be reproduced.**
4. Adjudication Order drafted by you must contains,-
  - (i) **Issues to be decided by you as an adjudicating authority:**
  - (ii) **Discussion and finding on each issue in the light of legal provisions, department stand and party's submission.**
  - (iii) **Your final order on each issue.**

### Model Answer:-

1. Before drafting the Adjudication Order, one should remember the following steps involved in the process:-

**Step No.1: Careful Consideration of the Material on Record**

**Step No.2: Listing of the Issues to be decided**

**Step No.3: Segregation of the Issues**

**Step No.4: Sequencing of Issues to be decided**

**Step No.5: Consideration of each Issue in Sequential Manner one by one** [in the light of allegations made by the Department and evidences relied upon in support of allegations, argument and counter-evidence submitted by noticee(s); and provisions of the law] **and giving Issue-wise findings.**

**Step No.6: Examination of Case Laws** [relied upon by the noticee or by the Department]

**Step No.7: Drafting of Adjudication Order** [after drafting of Adjudication Order, check it again for elimination of errors, inconsistencies, spelling mistakes, language defects etc., if any]

**Step No.8: Issuance of {well-reasoned} Order**

2. Further, you must also remember the various parts of an Adjudication order and their sequence:-

- **Brief facts of the case** (along with issues raised by the Department in the SCN).
- **Written submission** by the Noticee (s)
- **Records of Personal hearing** and submission (additional submission) made by the noticee (s) during personal hearing.
- **Discussions and Findings**
- **Order**

3. While drafting the discussions and findings, sequencing of paragraphs and content thereof may be done in the following manner:-

- (i) First paragraph is always on acknowledgement that adjudicating authority has carefully considered the material available on records such as show cause notices, evidences relied upon in the Show cause notice,

written submission made by the noticee (s); case laws relied upon by the noticee; and provisions of law as existed at the material time.

- (ii) Second paragraph may be devoted to listing of all the issues which are before adjudicator for decision. These issues may come from show cause notice or may be additional issues raised by the noticee(s) on ground of time bar, lack of jurisdiction, violation of principles of natural justice, non-return of NON-RUDs, RUDs not given or being not legible/incomplete etc.

**Note:** Adjudicator should keep in mind that the sequencing of issues while listing all the issues is equally important. Sometimes, issues raised by the noticee(s) may have implication on sustainability of SCN, then such issue(s) need to be considered first e.g. issues like SCN being time barred or SCN issued without jurisdiction etc.

- (iii) Third paragraph may be devoted to issues which noticee(s) has not contested. Discussion and findings on such issue(s) may be done in short [in other words, detailed discussions, examination and reasoning is not necessary].
- (iv) Fourth Paragraph onwards, you can sequentially take up rest of the issues one by one for examination, discussion and give your reasoning in support of decision arrived at by you.
- (v) This process may continue till all the issues listed in paragraph (ii) above have been considered, discussed and findings given.
- (vi) In the final paragraph, adjudicating authority may give his/her order in the impugned case.

4. Now, in the light of explanation given above, you may attempt drafting of Discussions and findings in the situation given above.

**Model Answer**

**Brief facts of the Case**

[to be filled up]

**Noticee's submission to the SCN,**

[to be filled up]

**Personal hearing and additional submissions made during Personal hearing**

[to be filled up]

**Discussions and findings**

1. I have carefully gone through the facts available on the records, reply of the importer and defence put forth at the time of personal hearing.

*[P.S. Acknowledgement paragraph]*

2. I find that the following issues are required to be decided in the instant case :-

- (a) whether the imported 100 mobiles having total Assessable Value of Rs. 50,50,000/- are liable for confiscation under Section 111(m) of Customs Act, 1962;
- (b) whether the value of the imported mobiles declared in the B/E No. 111111 dated 29.02.2016 is liable for rejection under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (c) whether the value of imported goods is required to be re-determined at Rs. 50,50,000/- in terms of rule 4 of the said Rules on the basis of the assessable value of identical goods imported during the relevant period;
- (d) whether the differential Customs Duty total amounting to Rs. 10,07,475/- (BCD Rs. 4,79,750/- + CVD Rs. 5,27,725/-) is demandable from the importer under Section 28 of the Customs Act, 1962;
- (e) whether interest is demandable under Section 28AA of the Customs Act, 1962
- (f) Whether penalty should not be imposed under Section 112(a) of the Customs Act, 1962.

*[P.S.: The issues listed have been taken from the Charging Paragraph of the SCN. It may be noted that no new issue or additional issue has been raised by the noticee.]*

3. Now, I proceed further to consider each of the issue listed above.
4. I find that the importer has filed the Bill of Entry No.\_\_\_\_, dated \_\_\_for clearance of “Unbranded Mobile Phones”. The quantity of goods declared in the Bill of Entry was 100 at the rate of USD 50 (CIF Basis). On examination of the goods by SIIB, the goods were found to be Mobile Phones of Apple Brand and Model No. 5S. The examination report has not been contested by the Importer.

[P.S.: Mention of the facts which are not in dispute]

5. Since the Goods imported has been found to be branded one as well as of Model 5S against the importer’s declaration of goods being unbranded one, the value declared by the importer at the rate of 50 USD/ piece is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and it needs to be determined in terms of provisions contained in Rule 3 and 4 of the Customs Valuation Rules, 2007.
6. Since it is the case of mis-declaration /non-declaration of brand and model number of imported mobile phones and importer has failed to furnish the correct transaction value of the imported goods, the same cannot be determined under Rule 3 of the Customs Valuation Rules, 2007. As per provisions of Rule 3 of the Customs valuation rules, 2007, the assessable value of the goods needs to be determined in terms of valuation by sequentially following through rules 4 to 9.
7. I find that the department has relied upon the contemporaneous import of identical goods to arrive at the assessable value of imported goods under Rule 4 of the Customs Valuation Rules, 2007. The importer has also not questioned the same in his written as well as oral submission. Therefore, I find that the correct assessable value of imported goods is Rs.50,50,000/- on the basis of contemporaneous imports of identical goods under Rule 4 of the Customs Valuation Rules, 2007.
8. As the value of imported goods has been found to be mis-declared and the same has been re-determined to be Rs.50,50,000/-. Therefore, I find that the differential duty amounting to Rs.10,07,475/- is recoverable from the importer under Section 28 of the Customs Act, 1962 along with interest under Section 28AA of the Custom Act, 1962.
9. As imported goods have been found to be mis-declared in terms of brand, model and value, therefore, the same are liable for confiscation under Section 111 (m) of the Customs Act, 1962.
10. As it is clear case of mis-declaration of imported goods, the importer is liable for imposition of penalty under Section 112 (a) of the Customs Act, 1962. I do not find much

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force in the contention of the importer that the import goods have been wrongly shipped by the shipper and compliance history of the importer.

11. In the light of above discussions and findings, I order as under:-

### ~ ORDER ~

- (a) I reject the declared value of the imported mobiles declared in the B/E No. 111111 dated 29.02.2016 under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- (b) I re-determine the assessable value of imported goods as Rs.50,50,000/- in terms of rule 4 of the said Rules;
- (c) I confirm the demand of differential Customs Duty total amounting to Rs.10,07,475/- (BCD Rs.4,79,750/- + CVD Rs.5,27,725/-) and order for recovery of the same from the importer under Section 28 of the Customs Act, 1962;
- (d) I order for recovery of the interest on the duty so paid in short under Section 28AA of the Act ibid from the importer.
- (e) I confiscate the goods imported and sought to be cleared by the importer vide B/E No.111111 dated 29.02.2016 under section 111 (m) of the Customs Act, 1962. However, I allow redemption of the goods to the importer on payment of fine of **Rs.5,00,000/-**
- (f) I impose penalty of **Rs.2,50,000/-** on the importer under Section 112(a) of the Customs Act, 1962.

**Additional Commissioner (SIIB)**

To

M/s \_\_.,

Copy for information and necessary action to:-

- (i) The Commissioner of Customs (Import & General);
- (ii) The Deputy Commissioner, in charge of Review Cell,
- (iii) The Deputy Commissioner, in charge of Recovery Section.
- (iv) The Adjudication section for master folder.
- (v) Office Copy.
- (vi) Notice Board

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