



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS**  
**CUSTOM HOUSE: MUNDRA, KUTCH**  
 MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421  
 Phone No. 02838-271029/423 FAX No. 02838-271425  
 Email : importsectionmundra@gmail.com

A	File No.	CUS/APR/BE/SAO/25/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	<b>MCH/ADC/AK/60/2024-25</b>
C	Passed by	<b>ARUN KUMAR</b> Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	06.06.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Global Petrochem (India) 50, East Avenue Road, East Punjabi Bagh, New Delhi-110026
F	DIN No.	<b>20240671MO0000555B04</b>

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),  
 चौथी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”  
**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**  
**Having his office at 4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road,**  
**Navrangpura, 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 ज्ञापन के साथ ड्रूटि/ 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.

OIO - MCH/ADC/AK/60/2024-25  
DIN-20240671MO0000555B04

**Brief facts of the case:**

M/s Global Petrochem (India) (IEC No. 0505035031/PAN-AOCPS5883F) situated at 50, East Avenue Road, East Punjabi Bagh, New Delhi-110026, ('**Importer**' for the sake of brevity) have filed Bill of Entry No. 2118339 dated 13.02.2024 (herein after referred to as *the Said Bill of Entry* for the sake of brevity) for import of purportedly said to be Fuel Oil (CTH-27101951) through Customs Broker- M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd (AAGCS2827JCH004) at Mundra Port.

2. Intelligence was developed by the SIIB Section, Custom House, Mundra to the effect that M/s Global Petrochem has imported a consignment of Fuel Oil in barrels from Papua New Guinea which may have mis-declared items.

3.1 Accordingly, the consignment covered under the said Bill of Entry was kept on hold and examined on 21.02.2024. During the examination representative sample have been drawn to ascertain the exact composition of the imported goods declared as Fuel Oil and forwarded to the CECL, Vadodara vide Test Memo No. 886-895 all dated 21.02.2024.

3.2 The Lab Examiner, CECL, Vadodara vide various reports (received during the month of March-April, 2024) has submitted the chemical analysis of the samples as under:

<b>Sr. No.</b>	<b>Test Memo No. &amp; date</b>	<b>Test Report No. &amp; date</b>	<b>Outcome of the report</b>
1	886 dated 21.02.2024	RCL/MUNDRA/IMP/6118	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8682 gm/ml</p> <p>Flash Point (PMCC): 157 °C</p> <p>K.V. at 50°C: 26.593 Cst</p> <p>Ash Content: 0.53% by wt</p> <p>Water content: Nil</p> <p>Sediment content: 0.54% by wt</p> <p>Acidity (inorganic): 0.099 mg of KOH/gm</p> <p>Gross Calorific value (GCV): More Than 10,000 Cal/gm</p> <p>Sulphur Content%: 0.248</p>

			<p>PCBs, mg/Kg: 0.25  PAHs, Percentage: 0.00007  Lead Content, PPM: 7.42  Aresenic Content: PPM: ND  Cadmium + Chromium + Nickel, PPM= 65.20</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content, sediment content and acidity inorganic, it is off specification fuel oil/waste oil. The samples was further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
2	887 dated 21.02.2024	RCL/MUNDRA/IMP/6121	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.9091 gm/ml  Flash Point (PMCC): 205 °C  K.V. at 50°C: 208.82 Cst  Ash Content: 0.007% by wt  Water content: Nil  Sediment content: 0.007% by wt  Acidity (inorganic): 0.42 mg of KOH/gm  Gross Calorific value (GCV): More Than 10,000 Cal/gm  Sulphur Content%: 1.344  PCBs, mg/Kg: 1.52  PAHs, Percentage: 0.016  Lead Content, PPM: ND  Aresenic Content: PPM: ND  Cadmium + Chromium + Nickel, PPM= 65.20</p>

			<p>Nickel, PPM= 56.62</p> <p>Above tested parameters  <b>sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of acidity inorganic, it is off specification fuel oil/waste oil. The samples was further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
3	888 dated 21.02.2024	RCL/MUNDRA/IMP/6120	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8644 gm/ml</p> <p>Flash Point (PMCC): 118 °C</p> <p>K.V. at 50°C: 13.246 Cst</p> <p>Ash Content: 0.49 % by wt</p> <p>Water content: Nil</p> <p>Sediment content: 0.75 % by wt</p> <p>Acidity (inorganic): 0.11</p> <p>Gross Calorific value (GCV): 10,320 Cal/gm</p> <p>Sulphur Content%: 0.201</p> <p>PCBs, mg/Kg: 0.55</p> <p>PAHs, Percentage: 0.001</p> <p>Lead Content, PPM: 4.38</p> <p>Aresenic Content: PPM: ND</p> <p>Cadmium + Chromium + Nickel, PPM= 60.42</p> <p>Above tested parameters  <b>sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content</b></p>

			<p><b>and sediment content, it is off specification fuel oil/waste oil. The samples were further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
4	889 dated 21.02.2024	RCL/MUNDRA/IMP/6115	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8931 gm/ml</p> <p>Flash Point (PMCC): 195.0 °C</p> <p>K.V. at 50°C: 86.586 Cst</p> <p>Water content: Nil</p> <p>Sediment content: 0.81 % by wt</p> <p>Acidity (inorganic): 0.13</p> <p>Gross Calorific value (GCV): 10,280 Cal/gm</p> <p>Sulphur Content%: 0.762</p> <p>PCBs, mg/Kg: 0.58</p> <p>PAHs, Percentage: 0.001</p> <p>Lead Content, PPM: 1.57</p> <p>Aresenic Content: PPM: 4.19</p> <p>Cadmium + Chromium + Nickel, PPM= 113.24</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content and sediment content, it is off specification fuel oil/waste oil. The samples were further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>

5	890 dated 21.02.2024	RCL/MUNDRA/IMP/6113	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8728 gm/ml</p> <p>Flash Point (PMCC): 161.0 °C</p> <p>K.V. at 50°C: 20.088 Cst</p> <p>Water content: Nil</p> <p>Ash Content: 0.87% by wt.</p> <p>Sediment content: 1.10 % by wt</p> <p>Acidity (inorganic): 0.14%</p> <p>Gross Calorific value (GCV): 10255 Cal/gm</p> <p>Sulphur Content%: 0.252</p> <p>PCBs, mg/Kg: 0.11</p> <p>PAHs, Percentage: 0.0001</p> <p>Lead Content, PPM: 3.75</p> <p>Aresenic Content: PPM: ND</p> <p>Cadmium + Chromium + Nickel, PPM= 71.88</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content, and sediment content, it is off specification fuel oil/waste oil. The samples was further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
6	891 dated 21.02.2024	RCL/MUNDRA/IMP/6117	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p>

			<p>Density at 15°C: 0.8748 gm/ml      Flash Point (PMCC): 204.0 °C      K.V. at 50°C: 30.91 Cst      Water content: Nil      Ash Content: 0.17% by wt.      Sediment content: 0.19 % by wt      Acidity (inorganic): 0.11%      Gross Calorific value (GCV): 10,000 Cal/gm      Sulphur Content%: 0.286      PCBs, mg/Kg: 0.92      PAHs, Percentage: 0.0004      Lead Content, PPM: 9.36      Aresenic Content: PPM: 0.44      Cadmium + Chromium + Nickel, PPM= 87.68</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content and acidity inorganic, it is off specification fuel oil/waste oil. The samples was further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
7.	892 dated 21.02.2024	RCL/MUNDRA/IMP/6119	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8370 gm/ml      Flash Point (PMCC): 69 °C      K.V. at 50°C: 2.67 Cst      Water content: Nil</p>

			<p>Ash Content: 0.011% by wt.</p> <p>Sediment content: 0.019 % by wt</p> <p>Acidity (inorganic): 0.11 mg of KOH/gm</p> <p>Gross Calorific value (GCV): More than 10,000 Cal/gm</p> <p>Sulphur Content%: 0.069</p> <p>PCBs, mg/Kg: 3.72</p> <p>PAHs, Percentage: 0.0398</p> <p>Lead Content, PPM: 3.49</p> <p>Aresenic Content: PPM: 0.12</p> <p>Cadmium + Chromium + Nickel, PPM= 88.53</p> <p>Above tested parameters <b><u>sample u/r does not meet</u></b> <b><u>the requirement of fuel</u></b> <b><u>oil IS:1593:2018, in</u></b> <b><u>respect of acidity</u></b> <b><u>inorganic, it is off</u></b> <b><u>specification fuel</u></b> <b><u>oil/waste oil. The</u></b> <b><u>samples was further</u></b> <b><u>tested as per Circular</u></b> <b><u>33/2001-Cus dated</u></b> <b><u>04.06.2001. It is</u></b> <b><u>Hazardous Waste.</u></b></p>
8	893 dated 21.02.2024	RCL/MUNDRA/IMP/6122	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.9054 gm/ml</p> <p>K.V. at 50°C: 116.42 Cst</p> <p>Water content: 2.00% V/v</p> <p>Ash Content: 0.79% by wt.</p> <p>Sediment content: 0.94 % by wt</p> <p>Acidity (inorganic): 0.12 mg of KOH/gm</p>

			<p>Gross Calorific value (GCV): More than 10,000 Cal/gm Sulphur Content%: 1.009 PCBs, mg/Kg: 0.36 PAHs, Percentage: 0.0003 Lead Content, PPM: 7.06 Aresenic Content: PPM: 2.75 Cadmium + Chromium + Nickel, PPM= 71.6</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS: 1593:2018, in respect of ash content, water content, sediment content &amp; acidity inorganic, it is off specification fuel oil/waste oil. The samples were further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
9	894 dated 21.02.2024	RCL/MUNDRA/IMP/6116	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8691 gm/ml Flash point (PMCC): 191.0°C K.V. at 50°C: 28.0 Cst Water content: NIL Ash Content: 0.79% by wt. Sediment content: 0.93 % by wt Acidity (inorganic): 0.11 mg of KOH/gm Gross Calorific value (GCV): More than 10,000 Cal/gm</p>

			<p>Sulphur Content%: 0.202  PCBs, mg/Kg: 0.61  PAHs, Percentage: 0.0008  Lead Content, PPM: 2.24  Aresenic Content: PPM: ND  Cadmium + Chromium + Nickel, PPM= 32.93</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS: 1593:2018, in respect of ash content, sediment content &amp; acidity inorganic, it is off specification fuel oil/waste oil. The samples were further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
10	895 dated 21.02.2024	RCL/MUNDRA/IMP/6114	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.8687 gm/ml  Flash point (PMCC): 180.0°C  K.V. at 50°C: 31.048 Cst  Water content: NIL  Ash Content: 0.55% by wt.  Sediment content: 0.72 % by wt  Acidity (inorganic): 0.12 mg of KOH/gm  Gross Calorific value (GCV): More than 10,315 Cal/gm  Sulphur Content%: 0.244  PCBs, mg/Kg: 1.89  PAHs, Percentage: 0.0004  Lead Content, PPM: 5.35</p>

		<p>Aresenic Content: PPM: ND Cadmium + Chromium + Nickel, PPM= 62.22</p> <p>Above tested parameters <b>sample u/r does not meet the requirement of fuel oil IS: 1593:2018, in respect of ash content, sediment content, it is off specification fuel oil/waste oil. The samples were further tested as per Circular 33/2001-Cus dated 04.06.2001. It is Hazardous Waste.</b></p>
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In view of the above, it is noticed that in all the samples, the test reports have testified the tested parameters sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content, sediment content and acidity inorganic, it is off specification fuel oil/waste oil. The samples were further tested as per Circular 33/2001-Cus dated 04.06.2001. **It is Hazardous waste (Mixed Hydrocarbon Oil).**

4.1 A statement of Shri Sagar Subhashchandra Dhairav, authorised person of the importer was recorded on 22.02.2024, wherein he has inter-alia stated as under:

- *He was looking after loading/unloading of import consignments of the company at Mundra Port since November, 2023. They have their local office at 306, AAROS, Rasapir Circle, Mundra Port Highway, Dhrub,*

*Mundra. Shri Lakhbir Singh is the proprietor of the firm who sits in Delhi office.*

- *They have imported Fuel Oil at Mundra Port from Maldives, UAE etc. in recent past.*
- *That the consignment of Mixed Fuel Oil has been imported under the Bill of Entry No. 2118339 dated 13.02.2024.*
- *The consignment has been imported from M/s Globex world FZE, PO Box No. 41958, Humriyah Free Zone, Sharjah, UAE and the loading port of the consignment is Port Moresby, Papua New Guinea.*
- *That do not have chemical analysis report of the goods imported vide Bill of entry No 2118339 dated 13.02.2024 as the same has not been provided to them by the supplier.*
- *that he was present during the examination of consignment covered under BE No. 2118339 dated 13.02.2024.*
- *He showed his agreement that the imported item stuffed in 5 containers was found packed in Barrels (Drums). On opening the Barrels, the imported item was found mainly as black colored thick liquid and in some cases brown/grey colored thick liquid was found.*
- *That he has no idea about nature and composition of the imported item.*
- *He was present during the drawing of representative samples of the imported items and was fully satisfied with the process of withdrawl of samples.*

4.2 Further, a statement of Shri Lakhbir Singh, Proprietor of M/s Global Petrochem (India) was recorded on 17.04.2024, wherein he has inter-alia stated as under:

- *M/s Global Petrochem (India) is engaged in the business of trading of fuel oil and furnace oil since 2019. Their IEC No. 0505035031 and PAN No. is AOCPS5883F.*
- *They are procuring trading material from overseas supplier as well as domestic supplier. He is looking after all day-to-day activity of the firm.*
- *They have imported Fuel Oil at Mundra Port from Maldives, UAE etc. in recent past.*
- *The Fuel oil/Furnace oil being imported by them is used in the iron and aluminium furnaces in Faridabad, Nimrana, Ludhiana area.*
- *On being shown the Bill of Entry No. 2118339 dated 13.02.2024 he stated that the consignment of Fuel Oil was imported under the said*

*Bill of entry from M/s Globex world FZE, PO Box No. 41958, Humriva Free Zone, Sharjah, UAE and the loading port of the consignment is Port Moresby, Papua New Guinea.*

- *That the BE was filed by M/s Shivam Clearing Agency (Mumbai)- CHA AAGCS2827JCH004 on being authorized by them.*
- *They were in coordination with Shri Ranjit Behera, Branch Manager, M/s Shivam Clearing Agency (Mumbai), Mundra for clearing of the consignment.*
- *They do not have chemical analysis report of the goods imported vide Bill of entry No 2118339 dated 13.02.2024 as the same was not provided to them by the supplier.*
- *On being shown the Examination report dated 21.02.2024 vide which the consignment imported vide Bill of entry No 2118339 dated 13.02.2024 was examined by the SIIB officer, he stated that their authorized representative, Shri Sagar Subhaschandra Dhairav was present during the examination. After examination of the consignment, he was informed that the imported item stuffed in 5 containers was found packed in Barrels (Drums). On opening the Barrels, the imported item was found mainly as black colored thick liquid and in some cases brown/grey colored thick liquid was found.*
- *Further, he was informed during the examination process, the officer has also drawn representative samples of the imported items.*
- *On being shown and perused the Test reports of the samples drawn from the consignments vide Test Memo No. 886 to 895 all dated 21.02.2024 (total-10 samples) received from the Central Excise & Customs Laboratory, Vadodara (CECL, Vadodara), he has categorically agreed that as per these test reports, the imported items do not meet the requirement of fuel oil (IS: 1593:2018), in respect of Ash Content, sediment content & acidity inorganic and the sample has been declared as Hazardous Waste.*
- *He shown his agreement with result of test reports shown to him and do not want any re test of the same.*
- *He further stated that they ordered for Fuel Oil and they were not aware as to how this hazardous waste was shipped by their exporter.*
- *That payment of the consignment has already been done in advance to their supplier, M/s Globex world FZE, PO Box No. 41958, Humriva Free Zone, Sharjah, UAE.*
- *That apart from the present consignment, they had imported one*

*consignment of Fuel Oil from M/s Globex world FZE, PO Box No. 41958, Humriyah Free Zone, Sharjah, UAE in the month of December, 2023. They filed BE No. 9390121 dated 23.12.2023 for that consignment and that consignment was cleared after testing of the samples from CRCL, Kandla which reported the samples as Fuel Oil. Therefore, they placed another order of Fuel Oil which has received in the present consignment.*

- *That they place order telephonically. After that they receive proforma invoice on WhatsApp/email for advance payment. After payment, the goods are shipped by the supplier.*
- *That they ordered for Fuel oil but when the SIIB team examined the goods, they came to know that hazardous waste have been supplied by their supplier. The test reports also verify that sample that the goods are not fuel oil and it's a hazardous waste.*
- *They want to re-export the consignment to their supplier back and do not want any Show Cause Notice and Personal hearing in the Matter.*

5 . 1 Here, it is pertinent to mention that as per **Rule 3(17)** of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016,

**“Hazardous waste”** means any waste which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes or substances, and shall include –

- waste specified under column (3) of Schedule I;*
- waste having equal to or more than the concentration limits specified for the constituents in class A and class B of Schedule II or any of the characteristics as specified in class C of Schedule II; and*
- wastes specified in Part A of Schedule III in respect of import or export of such wastes or the wastes not specified in Part A but exhibit hazardous characteristics specified in Part C of Schedule III;*

5.2. Further, Chapter-III of the said Rules governs the provisions of Import and Exports of Hazardous and other wastes. As per **Rule 11 of the Rules, ibid**, the Ministry of Environment, Forest and Climate Change shall be the nodal Ministry to deal with the transboundary movement (Import and export) of the hazardous and other wastes in accordance with the provisions of these rules.

5.3 As per **Rule 12 the Rules, ibid**,

**(1) No import of the hazardous and other wastes from any**

**country to India for disposal shall be permitted.**

(2) The import of hazardous and other wastes from any country shall be permitted only for recycling, recovery, reuse and utilisation including co-processing.

(3) The import of hazardous waste in Part A of Schedule III may be allowed to actual users with the prior informed consent of the exporting country and shall require the permission of the Ministry of Environment, Forest and Climate Change.

(4) The import of other wastes in Part B of Schedule III may be allowed to actual users with the permission of the Ministry of Environment, Forest and Climate Change.

(5) The import of other wastes in Part D of Schedule III will be allowed as per procedure given in rule 13 and as per the note below the said Schedule.

(6) No import of the hazardous and other wastes specified in Schedule VI shall be permitted.

(7) The export of hazardous and other wastes from India listed in Part A and Part B of Schedule III and Schedule VI shall be with the permission of Ministry of Environment, Forest and Climate Change. In case of applications for export of hazardous and other waste listed in Part A of Schedule III and Schedule VI, they shall be considered on the basis of prior informed consent of the importing country.

(8) The import and export of hazardous and other wastes not specified in Schedule III, but exhibiting the hazardous characteristics outlined in Part C of Schedule III shall require prior written permission of the Ministry of Environment, Forest and Climate Change before it is imported to or exported from India, as the case may be.

#### 5.4 Further, as per **Rule 15 of the Rules, ibid**,

(1) The export and import of hazardous or other wastes from and into India, respectively shall be deemed illegal, if,-

- (i) it is without permission of the Central Government in accordance with these rules; or
- (ii) the permission has been obtained through falsification, misrepresentation or fraud; or
- (iii) it does not conform to the shipping details provided in the movement documents; or
- (iv) it results in deliberate disposal (i.e., dumping) of hazardous or other waste in contravention of the Basel Convention and of general principles of international or domestic law.

(2) In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a

*period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists.*

*(3) In case of illegal import of hazardous or other waste, where the importer is not traceable then the waste either can be sold by the Customs authority to any user having authorisation under these rules from the concerned State Pollution Control Board or can be sent to authorised treatment, storage and disposal facility.*

6.1 In the present case, it is noticed that the importer has attempted to import the Hazardous waste (Mixed Hydrocarbon Oil) illegally without any permission as required under the statute, moreover by way of mis declaring the same as Fuel oil. The test reports received from the CECL, Vadodara have testified that samples do not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content, sediment content and acidity inorganic, it is off specification fuel oil/waste oil and samples have been testified as Hazardous Waste. Further, in view the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as discussed above, the hazardous waste attempted to import into India without fulfilling the compliance of the conditions mentioned in the Rules, ibid are considered as illegal, thus such import is required to be considered as illegal. Accordingly, the goods covered under BE No. 2118339 dated 13.02.2024 were found liable for confiscation under Section 111 (d) & 111(m) of the Customs Act, 1962 and hence placed under seizure under Section 110 of the Act, ibid vide seizure memo dated 22.04.2024 and handed over to the custodian of Saurashtra CFS, APSEZ for safe custody vide Supratnama dated 22.04.2024.

6.2 Further, the cargo imported vide BE No. 2118339 dated 13.02.2024 have been shifted to the Domestic containers as below:

<b>Sr. No.</b>	<b>Container No. (import)</b>	<b>Shifted to Domestic container</b>
1	MBIU8327669	CCLU3617282
2	TCLU3872978	UACU4003345
3	TEMU2497817	UACU4132867
4	TLLU2860380	UACU4003725
5	TEMU5741784	ACGU3728869

7. M/s Global Petrochem (India) vide letter dated 18.04.2024 has requested for permission to re-export the cargo covered under BE No. 2118339 dated 13.02.2024. Further, the importer has also submitted that

they do not want any PH and SCN and ready to pay the applicable fine and penalty.

### **LEGAL PROVISIONAS:**

8.1 As per **Section 2 (33)** of the Customs Act, 1962 '**prohibited goods**' means *any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*

8.2 As per Section 2 (39), '**smuggling**', in relation to any goods, means *any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

8 . 3 **SECTION 46** of the Act, prescribes that 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, and such other documents relating to the imported goods as may be prescribed.

8.4. Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

The following goods brought from a place outside India shall be liable for confiscation:

*(d) 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;*

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.*

8.5 Further, **Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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*

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to*

*confiscation under section 111,  
shall be liable, -*

*(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;*

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*

**Provided** that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

*(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;*

*(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;*

*(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

**8.6 SECTION 124** prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -*

- a. *is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
- b. *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

*(c) is given a reasonable opportunity of being heard in the matter:*  
**Provided** that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.  
**Provided** further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

## **9. REQUEST FOR RE-EXPORT AND WAIVER OF NOTICE AND PERSONAL HEARING:-**

Shri Lakhbir Singh, Proprietor of M/s Global Petrochem (India) in his statement recorded on 17.04.2024 and letter dated 18.04.2024 has requested for permission to re-export the cargo covered under BE No. 2118339 dated 13.02.2024. Further, the importer has also submitted that they do not want any PH and SCN and ready to pay the applicable fine and penalty. Therefore, considering the request of the importer and following the principle of natural justice no SCN issued in the matter.

## **10. DISCUSSION AND FINDINGS**

10.1 M/s Global Petrochem (India) have filed Bill of Entry No. 2118339 dated 13.02.2024 and attempted for import of Hazardous waste (Mixed Hydrocarbon Oil) classifiable under CTH – 27101990 by misclassifying the same as Fuel Oil under CTH-27101951.

10.2. I find that main issues to be decided are (i) whether declared classification and description is required to be upheld or otherwise (ii) whether imported goods are liable for confiscation and whether goods can be allowed for re-export and (iii) whether importer is liable for penalty under Customs Act, 1962.

10.2. I find that, on the basis of the intelligence, the consignment covered under BE No. 2118339 dated 13.02.2024 was examined on 21.02.2024 and representative samples have been drawn and forwarded to CECL, Vadodara to ascertain the exact composition of the imported goods. The test reports submitted by CECL Vadodara have testified that tested

parameters sample does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content, sediment content and acidity inorganic, it is off specification fuel oil/waste oil. Further, the Lab Examiner, CECL, Vadodara has also submitted that the samples were further tested as per Circular 33/2001-Cus dated 04.06.2001 and it found to be Hazardous waste (Mixed Hydrocarbon Oil).

10.3. From the above discussion and evidences available on record, I find it evident that a restricted item, i.e. Mixed Hydrocarbon having Hazardous waste has been attempted to be imported vide BE 2118339 dated 13.02.2024 by way of mis declaring the goods as Fuel Oil, under CTH-27101951, illegally by the importer without any permission as required under the statute, moreover by way of mis declaring the same as Fuel oil. As per the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as discussed above, the hazardous waste attempted to import into India without fulfilling the compliance of the conditions mentioned in the Rules, ibid appears to be considered as illegal. The proprietor of the importer firm, in his statement recorded during the investigation and letter dated 18.04.2024 submitted during the investigation has categorically admitted the facts that the imported material is hazardous waste.

10.4. In the instant case, I find that the importer had filed the bill of entry with incorrect particulars as discussed above. Whereas, the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, ibid casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, goods are restricted for import as per Hazardous and other waste (Management and Transboundary) Rules 2016; hence, the subject goods are prohibited in nature and the consignment covered under the said Bill of Entry appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962. Thus, I find that the importer has attempted to import a restricted item by way of mis-declaring the same as Fuel Oil and; thus, by their acts of omission and commission renders imported goods having declared value of **Rs. 24,26,011/-** liable for confiscation under Section 111(d) & Section (m) of the Customs Act, 1962.

10.5. From the discussion in para supra, I find that the importer, M/s Global Petrochem (India) had attempted to import a Mixed Hydrocarbon Oil with Hazardous waste in guise of Fuel Oil, by wilful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act and Rules made thereunder along with Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as discussed above with intent to smuggled these goods into India. The said acts of omission and commission on the part of the M/s Global Petrochem

(India) have rendered themselves liable for penalty under the provisions of Section 112(a) (i) of the Customs Act, 1962.

10.6. Whereas, Section 125(1) of the Customs Act, 1962 provides that: *"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the 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 an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit".*

10.7. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation for re- export of the said goods.

11. In view of the aforesaid discussions and findings, I pass the following order:

### **Order**

11.1 I reject the declared description of 'Fuel Oil' and declared classification under CTH-27101951 of the goods imported vide Bill of Entry No. 2118339 dated 13.02.2024 and order to classify the goods under CTH 27101990 with description as Hazardous waste (Mixed Hydrocarbon Oil) and order to re-assess the Bill of Entry No. 2118339 dated 13.02.2024 under Section 17 of the Customs Act, 1962 for the purpose of re-export only accordingly.

11.2. I order for confiscation of the goods imported vide Bill of Entry No. 2118339 dated 13.02.2024 declared as fuel oil having declared weight 81.648 MTs and declared value of Rs. 24,26,011/- mis declared as Fuel Oil covered under Section 111 (d) & Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 3,00,000/- (Rs. Three Lakh Only) under Section 125 of the Customs Act, 1962.

11.3 I impose a penalty of Rs. 1,00,000/-(Rs. One Lakh Only) on the importer M/s Global Petrochem (India) under Section 112 (a)(i) of the Custom Act, 1962.

11.4 I also allow the importer to re-export the subject goods imported vide BE No. Bill of Entry No. 2118339 dated 13.02.2024 declared as fuel oil having declared weight 81.648 MTs and declared value of Rs. 24,26,011/-, back to the overseas supplier with condition to pay all applicable fine &

penalty imposed herein. Further, as per section 125 of the Customs Act, 1962, if the importer does not pay the fine within a period of one hundred and twenty days from the date of the order, option to redeem the said goods shall become void, unless an appeal against the said order is pending and the said impugned goods would be liable for disposal as per instructions and guidelines in CBIC Disposal Manual, 2019. The cost of destruction shall be borne by the importer.

**12.** This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Signed by  
Ara Khar  
Date: 06-06-2024 (14:06:39)  
Additional Commissioner  
Import Section, CH Mundra

To,

M/s. Global Petrochem (India)  
50, East Avenue Road, East Punjabi Bagh,  
New Delhi-110026

1. The Deputy Commissioner of Customs (SIIB), Custom House, Mundra
2. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
3. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
4. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
5. The Manager, Saurashtra CFS
6. Guard File.