



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/TEST/20/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/105/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	25.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s Shree Ashapura Tradelink Private Limited, FF-3, Natraj Estate. Opp. Nagarvel Hanuman, Ahmedabad-380026
F	DIN No.	20240771MO000000AB4A

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 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, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th 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 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.

DIN - 20240771MO000000AB4A

Brief facts of the case:

M/s. Shree Ashapura Tradelink Private Limited, FF-3,Natraj Estate. Opp. Nagarvel Hanuman, Ahmedabad-380026 (ABKCS8979E) filed Bill of Entry No.2416641 dated 04.03.2024 for import of "Fuel Oil (For Industrial Use Only)" under CTH-27101959.

The details declared in the Bill of entry are as under:

(Amount in Rs.)					
Bill of Entry No. & Date	Description of goods	Qty. in Kgs	Ass. Value declared(Rs.)	Duty Payable declared	
2416641 dated 04.03.2024	Fuel Oil (For Industrial Use Only)	214270	70,90,004/-	15,06,271/-	

2.1 The examination of the cargo imported vide Bill of Entry 2416641 dated 04.03.2024 was done under the supervision of the Superintendent (DE) in the presence of CB representative. During the examination representative sample was drawn vide Test Memo no. 1207554 dated 11.03.2024 and forwarded to CECL, Vadodara lab for testing purpose. The goods/ cargo of the said bill of entry were stuffed in the 10*20 containers. The said Bill of Entry has been pushed to PAG from FAG with following remarks by the appraising officer:-

"As per the CRCL test report, the imported item is off specification fuel oil/waste oil & hazardous waste in terms of circular no.33/2021-Customs.Hence,the B/E may be pushed to local port for adjudication & further necessary action please"

2.2. The CECL, Vadodara vide Test Report Lab No. 6317 dated 28.03.2024 submitted his report stating that-

"The sample as received is in the form of brownish black oily liquid having following constants:

Density at 15°C.g/cm ³	= 1.1519
Flash Point (Abel),	= 38.5 °C
K.V. at 40 °C	= 59.718 Cst
Ash Content	= 1.50%
Water Content	= Nil
Sediment Content	= 1.81%
Acidity, inorganic, mg of KOH/gm	= 13.16

Gross Calorific value, Cal/gm = 5775.20
 Sulphur Content = 0.443%
 PCBs,mg/Kg = 0.26
 PAHs,% = 0.022
 Lead content = 27.43 ppm
 Arsenic content = . 427 ppm
 Cadmium+Chromium+Nickel=68.27 ppm

Above tested parameters sample u/r does not meet the requirement of Fuel Oil as per IS:1593:2018 in respect of Ash content, sediment content acidity inorganic, Flash point and Gross Calorific value. It is off specification fuel oil/waste oil. The sample was further tested as per Circular no.33/2001-Cus dated 4th June, 2001. It is hazardous waste.

Sealed remnant sample returned herewith"

2.3 Further, the importer vide letter dated 03.04.2024 has submitted that they do not agree with the test report and requested for re-testing of the goods. The competent authority has approved the request of the importer for retesting and accordingly remnant samples were forwarded to CRCL, New Delhi as per Board Circular No.30/217-Cus dated 18.07.2017.

The CRCL, New Delhi vide letter F.No. 27-Cus/C-21/2024-25 dated 30.05.2024 has submitted the retest report as below:

"The sample is in the form of brown coloured viscous liquid. It is composed of polyester based resinous material, water and organic solvent. Hydrocarbon content is less than 70% by wt. It has following constants:

S. No.	Characteristics	Requirement of Fuel oil as per IS:1593:2018	Test result
1	Acidity, Inorganic, mg KoH/g	Nil	16.14
2	Ash, percent by mass, Max	0.1	1.85
3	Carbon residue, mass percent, Max	14 to 20	1.36
4	Density at 15 degree Celsius, kg/m3	To be reported	1151.5
5	Flash Point (PMCC), degree Celsius	66	36.70
6	K.V at 50 degree Celsius, cSt	Upto 380	62.52
7	Sediment, % by mass, Max	0.25	4.70
8	Total Sulphur content % by mass, Max	3.5 to 4.5	0.08
9	Water content % by Vol.	1.0	12.0
10	Non-volatile residue % by mass	-	44.04
11	Polychlorinated biphenyl (PCBs), ppm	-	ND(LOQ-0.01)

12	Polyaromatic hydrocarbons (PAHs), (% by mass)	-	0.0080
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"The sample u/r is other than "Fuel Oil".

The hazardous concentration limit of Polychlorinated biphenyl (PCBs) and Polyaromatic hydrocarbon (PAHs) are under the limit as per Hazardous and other Waste (Management and Transboundary) Rules, 2016.

Note: Based on the composition, the sample u/r is not identifiable as "fuel oil" and has presence of significant amount of polyester bases resinous matter and therefore needs further investigation at your end keeping revenue & safeguard in view"

Further, a clarification in respect of the above mentioned test report has been sought from CRCL, New Delhi and a reply in this regard has been received vide letter F.No. 27-Cus/C-21/2024-25 dated 05.07.2024 as below:

"In this regard, it is stated that the percentage of Non-volatile resinous matter of sample had already mentioned in re-test report. Non-volatile resinous matter is mainly composed of polyester based polymeric compound."

2.4 From the test report and its clarification, it is confirmed that the goods are other than the declared goods and the goods do not appears classifiable under CTH-27101959 as the sample has presence of significant amount of polyester based polymeric compound with water and organic solvent having hydrocarbon contents less than 70% by wt. The test report also confirms the non-hazardous nature of goods as the hazardous concentration limit of Polychlorinated biphenyl(PCBs) and Polyaromatic hydrocarbon(PAHs) are under the limit as per Hazardous and other Waste(Management and Transboundary) Rules,2016.

2.5 The importer has been asked to comment on the appropriate classification of the goods with technical literature/ end use etc. from supplier end in respect of the test report and clarification received from the lab.

The importer vide their letter dated 15.07.2024 has submitted his reply as below:

"The sample is clearly other than the fuel oil and it is non-hazardous in nature. Seeing the tested parameters of the product, it appears that it is a preparation containing polyester based resinous material, water, organic solvent and hydrocarbon content is less than 70%

as mentioned in the test report issued by the CRCL, New Delhi dated 30.05.2024. So the product may be classified in CTH-340319, so we have agreed in test report and we have no objection to change the CTH 27101959 to 340319 and please assess the bill of entry."

3. Classification of goods

3.1. It is pertinent to mention that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GIR) specified in the Import Tariff are in accordance with the GIR specified in the HSN. In terms of GIR 3A of the HSN and the import Tariff :-

The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

3.2. Further, GIR 6 of the HSN and the import Tariff specifies that -

The classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes...

3.3. The importer while filing the Bill of Entry has classified the imported goods under CTH-27101959. The description of CTH 27101959 as per ITC-HS is as below:

2710 PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS

- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:

271019 -- Other

--- Fuel oils conforming to standard IS 1593:
27101959 ---- Grade HV

3.4. The description of CTH 34031900 is as below:

3403- *lubricating preparations (including cutting-oil preparations, bolt or nut release preparations, anti-rust or anti-corrosion preparations and mould release preparations, based on lubricants) and preparations of a kind used for the oil or grease treatment of textile materials, leather, furskins or other materials, but excluding preparations containing, as basic constituents, 70 % or more by weight of petroleum oils or of oils obtained from bituminous minerals:*
34031900 -- *other.*

4.1. In view of the test reports received from CRCL clarification and description of CTH 27101959 & 34031900, it is evident that the imported goods does not merit classification under CTH-27101959. Further, going through the description of CTH 3403, it appears that the chapter covers the lubricating preparation excluding the preparation containing, as basic constituents, 70% or more by weight of petroleum oils. In the instant case, as per the test report, the weight of petroleum oils is less than 70%, therefore, it appears that the imported goods are more appropriately classifiable under CTH-34031900.

4.2. In view of above, it is evident that the importer has mis-declared their goods as "Fuel Oil (CTH-27101959) which is actually Other Lubricating Preparation classifiable under (CTH-34031900). Whereas, the imported goods classifiable under CTH-34031900 attracts 27.735% of duty (BCD-7.5%, SWS-0.75%, IGST-18%) on the other hand the CTH - 27101959 declared by the importer for the goods attracts 24.490% of duty (BCD-2.5%.SWS-0.250% & IGST-18%). Accordingly, the differential duty calculated and payable by the importer is as under:

Bill of Entry No. and Date	Qty (in kgs)	Ass. Value Declared in the BE	Duty paid under CTH-27101959	Duty payable under CTH-34031900	Differential Duty
2416641 dated 04.03.2024	214270	Rs.7090004/-	BCD@2.5%- Rs.177250/- SWS@10%- Rs.17725/- IGST@18%- Rs.1311296/- Total duty payable- Rs.15,06,271/-	BCD@7.5%- 531750/- SWS@10%- 53175/- IGST@18%- Rs.13,81,487.22/- Total Duty payable- Rs.19,66,412/-	Rs.4,60,141/-

4.3. In the instant case, it appears that the importer has misclassified the imported goods as the fuel oil which are actually polyester based resinous material and are appears to be Other Lubricating Oil preparation classifiable under CTH 34031900 to avoid the higher rate of duty applicable. Therefore, the goods imported under above Bill of Entry No. 2416641 dated 04.03.2024 are liable for confiscation under Section 111(m) of the Customs Act, 1962.

5. With the introduction of self-assessment under Section 17(1) of Customs Act, 1962, the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs. 4,60,141/-. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods under CTH 27101959 instead of the correct CTH of 34031900, with an intention to evade payment of correct duty on the goods imported. Thus, there is a reason to believe that the importer deliberately and wilfully misstated the facts in terms of applicability of duty, causing loss to Govt. Revenue. Therefore, the importer is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

6. Relevant Legal Provisions:

6.1 Section 17(1): Self-assessment of duty:

After an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 the imported goods or the export goods, as the case may be, or such part thereof as may be necessary may, without undue delay, be examined and tested by the proper officer.

6.2 Section 46. Entry of goods on importation:

(4) 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.

[(4A) the importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;*
- (b) The authenticity and validity of any document supporting it; and*
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]*

6.3 Section 111. Confiscation of improperly imported goods, etc. – *The following goods brought from a place outside India shall be liable to confiscation:-*

(a) --

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(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;

6.4 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*
 - (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 10not 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.*

SHOW CAUSE NOTICE & PERSONAL HEARING

7. The importer in their reply dated 16.07.2024 has submitted they do not want personal hearing and show cause notice in the matter and informed that they are accepting the process of Adjudication by the Customs and also accepts the fine and penalties if any applicable on us .

DISCUSSION AND FINDINGS

8. I have carefully gone through the facts of the case available on records. The importer vide letter dated 06.07.2024 has already submitted their consent to decide the matter on merit as per the test results and gave their consent to re- assess the said bill of entry. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. The following main issues which are required to be decided:

8.1. Whether, the classification of the goods as claimed by the importer under heading 27101959 is liable to be rejected and the goods are liable to re-classified under heading 34031900 and B/E is liable to be re-assessed.

8.2. Whether, the goods imported vide B/E 2416641 dated 04.03.2024 are liable to be confiscated under section 111(m) of the Customs Act, 1962

8.3. Whether, the importer is liable to be penalized under section 112(a) (ii) of the Customs Act, 1962.

9.1. I observed that M/s. Shree Ashapura Tradelink Private Limited, FF-3, Natraj Estate, Opp. Nagarvel Hanuman, Ahmedabad-380026 has imported "Fuel oil" under CTH-27101959 vide Bill of Entry No.2416641 dated 04.03.2024. Further, the test reports received from CRCL Delhi revealed that the imported goods are "other lubricating oil preparation" falling under Chapter 34031900". The importer vide bill of entry no. 2416641 dated 04.03.2024 has attempted to import the other lubricating oil preparation falling under CTH -34031900 by mis-classifying the same as "Fuel Oil" and mis-declaring CTH as 27101959. The imported goods classifiable under CTH-34031900 attracts 27.735% of duty(BCD-7.5%,SWS-0.75%,IGST-18%) whereas the CTH declared by the importer for the goods CTH-27101959 attracts 24.490% of duty(BCD-2.5%.SWS-0.250% & IGST-18%).

9.2 In the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods under CTH 27101959 instead of the correct CTH of 34031900, with an intention to evade payment of correct duty on the goods imported. Thus, there is a reason to believe that the importer deliberately and willfully misstated the facts in terms of applicability of duty, causing loss to Govt. Revenue. 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.

9.3. Therefore, I find that the impugned goods imported vide BE No. 2416641 dated 04.03.2024 having declared value of Rs. 70,90,004/- are liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importer rendered themselves liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

9.4. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the CTH and declaring applicable duty on the imported goods. Therefore, the imported goods are required to be re-classified under CTH-27101990 and the said goods are liable for confiscation under Section 111 (m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112(a)(ii) of Customs Act 1962.

9.5. 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".

9.6. 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 on the subject to clearance of goods for Home Consumption with condition to assessment of goods.

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

ORDER

- I. I order to reject the declared description and classification i.e. Fuel Oil CTH-27101959 of the goods imported vide Bill of Entry No. 2416641 dated 04.03.2024 and order to classify the goods imported vide Bill of Entry No. 2416641 dated 04.03.2024 under CTH 34031900.
- II. I order to reassess the Bill of Entry No. 2416641 dated 04.03.2024 as per Section 17 of the Customs Act, 1962.
- III. I order for confiscation of the goods imported vide Bill of Entry No. 2416641 dated 04.03.2024 declared as "Fuel Oil (CTH-27101959" weighing 214270 Kgs having Assessable Value of Rs. 70,90,004 (Rupees Seventy Lakhs Ninety

thousand and four Only) imported vide Bill of Entry No.2416641 dated 04.03.2024 under 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. 8,20,000/- (Rs. Eight Lakhs Twenty Thousand Only) under Section 125 of the Customs Act, 1962.

IV. I impose a penalty of Rs. 30,000/- (Rs. Thirty Thousand Only) on the importer M/s. Shree Ashapura Tradelink Private Limited under Section 112 (a)(ii) of the Custom Act, 1962.

10. 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
Arun Kumar
(Arun Kumar)
Date: 25-07-2024 17:18:28
Additional Commissioner
Import Section, CH Mundra

F.No.I/2156283/2024

Date:25-07-2024

To,
M/s. Shree Ashapura Tradelink Private Limited,
FF-3, Natraj Estate. Opp. Nagarvel Hanuman,
Ahmedabad-380026

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. Guard File.