F. No: VIII/10-35/ICD-Sachana/O&A/HQ/2024-25
OIO No:08/ADC/VM/O&A/2024-25

प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्कभवन ,"पहलीमंजिल ,पुरानेहाईकोर्टकेसामने ,नवरंगपुरा ,अहमदाबाद – 380 009.

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DIN:

PREAMBLE

A	फ़ाइलसंख्या/ File No.	:	VIII/10-35/ICD Sachana/O&A/HQ/2024-25
B	कारणबताओनोटिससंख्या–तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by the Importer
C	मूलआदेशसंख्या/ Order-In-Original No.	:	**08/ADC/VM/O&A/2024-25**
D	आदेशतिथि/ Date of Order-In-Original	:	**18.04.2024**
E	जारीकरनेकीतारीख/ Date of Issue	:	**18.04.2024**
F	द्वारापारित/ Passed By	:	**Vishal Malani**, Additional Commissioner, Customs, Ahmedabad.
G	आयातककानामऔरपता / Name and Address of Importer / Passenger	:	**M/s. Savino Paper LLP**, Survey No. 74, AT. & Po. Nananpur, Ta. Prantij, Dist. – Sabarkantha, Gujarat - 383210. **Email:** savinopapers@gmail.com
(1)	**यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

Brief Facts of the case:

Based on NCTC Alert 394/IMP/2023-24 received on 23.05.2023, intimating that UAE has banned export of Waste Paper under CTH 4707 vide Dubai Customs Notices/Orders 08/2022, 05/2023 and 06/2023. The consignment of **M/s. Savino Paper LLP**, Survey No. 74, AT. & Po. Nananpur, Ta. Prantij, Dist. – Sabarkantha, Gujarat - 383210 (for brevity 'the Importer') covered by Bill of Entry No. 5883568 dated 10.05.2023 filed through their Customs Broker M/s. Unique Speditorer Pvt. Ltd., Ahmedabad (for brevity 'CB) for import of 236.480 MT of goods in ten (10x40') containers declaring the same as 'Waste Paper Corrugated Containers' CTH 47079000 from M/s. Sharjah Environment Co. LLC, Sharjah, UAE, showing country of origin to be 'United Arab Emirates' was examined by the Shed Staff, ICD-SACHANA, Ahmedabad accordingly. The details are as under:

S. No.	Bill of Entry and dated	Bill of Lading No.	Container No. (20' Container)	Quantity / Net Weight (MT) declared (BOE)	Description of goods declared
1	5883568 dated 10.05.2023	HLCUDX3230428100 dated 03.05.2023	FBLU0126075 FCIU7613555 FSCU7218591 HAMU1270026 HLBU1681623 HLBU3088480 HLBU3223960 SEKU6058153 TCKU6075775 UACU5716700	236.480	Waste paper Corrugated Container (HSN 47079000)

2. The said consignment was examined at import yard of ICD-Sachana, Ahmedabad and the consignment was found to comprise of 'Waste Paper Corrugated Containers".

3. Waste paper import permitted in the Country to the actual user or to the trader on behalf of the actual user authorised by SPCB on onetime basis subject to verification of documents specified in scheduled VIII of the rules. The supporting documents required for import of waste paper includes Certificate of Origin, PSIC, Self-declaration cum undertaking of Supplier, Certificate of chemical analyst. In the absence of these documents, import of waste paper become restricted/prohibited for import. Hence, the goods so imported fall under the category of restricted goods; and that the restricted goods also fall under the definition of 'prohibited goods', as defined under Section 2(33) of the Act.

4. The importer in this regard submitted the copy of the Certificate of Origin, PSIC, Self-declaration cum undertaking of Supplier, Certificate of chemical analyst while presenting Bill of entry before Customs.

5. The import documents filed with the Bill of Entry also reveal the UAE origin of the import goods but the export of waste paper under CTH 4707 from United Arab Emirates is prohibited.

6. Therefore, on the reasonable belief that the goods imported by the importer are liable for confiscation under Section 111 of the Customs Act, 1962 (for brevity 'the Act') as the same were imported without any valid PSIC/ importer had mis-declared the country of origin in contravention of the provisions of the Section 46(4) of the Customs Act, 1962, the same were seized under Section 110 of the Customs Act vide seizure memo dated 21.06.2023 under panchnama proceedings dated 21.06.2023.

7. From the foregoing, it appears that the impugned goods, have been imported in contravention of the provisions contained in Section 46(4) and 46(4A) of the Act read with FTP, 2015-2020 and 2023. The goods so imported fall under the category of restricted goods and the restricted goods also fall under the definition of 'prohibited goods', as defined under Section 2(33) of the Act. The same thus, appear liable for confiscation under Section 111(d) of the Act. Further, the Importer has also rendered itself liable for penal action under Section 112(a)(i) of the Act.

SUBMISSIONS OF THE IMPORTER: -

8. The importer has been explained the contraventions involved in the import of impugned goods verbally and they accept the same. The importer vide letter dated 05.07.2023 requested to release their cargo provisionally on furnishing of Bond and Bank Guarantee. Further vide letter dated 14.03.2024, importer submitted that they do not want show cause notice in the matter and also do not want personal hearing.

DISCUSSION AND FINDINGS: -

9. I have gone through the facts of the case. I observe that the genesis of the whole issue is that there has been import of 'Waste Paper Corrugated Containers' showing country of origin as 'UAE' in-spite of the fact that there had been complete ban of export of such waste paper from UAE during the period from October, 2022 to June, 2023 and same has been extended upto

September, 2023. I observe that the present case of the Importer is also covered by the situation.

10. Before, deliberating on the evidences in hand before me, I observe that the Importer has provided the export documents filed by the supplier before their respective Customs Authorities. In this regard I observe that at the stage of adjudication, non-availability or availability of such export documents would not have much bearing on the final outcome of the issue, as the present adjudication proceedings are already taking care of the aspect of confiscation of the impugned goods only, in the light of alleged violations leading to confiscation under Section 111 of the Act. Thus, the present adjudication proceedings are without prejudice to any other action that may be necessitated / taken, in view of any other evidences surfacing subsequently.

11. I find that investigations in the matter had been conducted from the following:

i. The Importer with respect to the export documents;
ii. The import documents filed by the importer while filing the Bill of Entry with respect to the movement of the containers from the port of origin to the destination port;

12. Similarly, as per import documents, filed while filing the impugned Bill of Entry, in respect of the containers covering the impugned consignment it comes out that the containers have originated from UAE only. The above, details shows the Port of Loading to be Jabel Ali and final destination to be ICD Sachana.

13. As regards the issue related to PSIC, I find that O.M. dated 13.06.2023 issued by the DGFT clarified that:

> *"if there are cases where 'PSIC' shows place of inspection in UAE and import item is banned by UAE for export, it may tantamount to mis-declaration on the part of PSIA and such PSIC may be treated as* ***invalid****".*
>
> ***(Emphasis supplied)***

14. In view of the clarification of DGFT, it is amply clear that the imported goods "Waste Paper Corrugated Containers" falling under CTH: 4707 has been banned by UAE for export during the material time. Further, I observe that in the instant case, the importer has imported impugned goods i.e. waste paper Corrugated Containers accompanying the mandatory pre-shipment inspection certificate (PSIC), which tantamount to be invalid as per O.M. dated 13.06.2023 issued by the DGFT.

15. Waste paper import permitted in the Country to the actual user or to the trader on behalf of the actual user authorised by SPCB on onetime basis subject to verification of documents specified in scheduled VIII of the rules. The supporting documents required for import of waste paper includes Certificate of Origin, PSIC, Self-declaration cum undertaking of Supplier, Certificate of chemical analyst. In the absence of these documents, import of waste paper become restricted/prohibited for import. Hence, the goods so imported fall under the category of restricted goods; and that the restricted goods also fall under the definition of 'prohibited goods', as defined under Section 2(33) of the Act.

In the present case the export of waste paper falling under CTH 4707 has been banned by UAE and as such the documents produced by the importer mentioning the Country of Origin and PSIC appears to be mis-declaration on the part of importer. Further, in certain export documents like, Bill of lading, PSIC and Chemical analysis report the CTH mentioned as 47071000, whereas importer mentioned the CTH as 47079000 in the Bill of Entry which is also mis-declaration on the part of importer.

16. I further observe that Section 2(33) of the Customs Act, 1962, defines "prohibited goods" as under:

> *"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."*

17. The above definition of "prohibited goods" includes not only goods whose import is prohibited but also those whose import is "restricted" subject to fulfilment of the specified conditions and if such conditions are not fulfilled would qualify as prohibited goods as defined in Section 2(33) of the Act. In this regard, the reliance is placed on the judgment of Hon'ble Supreme Court in the case of Om Prakash Bhatia Versus Commissioner of Customs, Delhi [2003 (155) E.L.T. 423 (S.C.)] where under relying upon the judgment in the case of Sheikh Mohd. Omer Vs. C. Cus 1970(2) SCC 28 the Hon'ble Supreme Court has held that prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods and if conditions are not fulfilled, it may amount to prohibited goods under Section 2(33) of the Act. The relevant Para 9 of the judgment is reproduced here-in-under:

"9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in ShekihMohd. Omer v. Collector of Customs, Calcutta and Others [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held thus: -

'...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words, all types of prohibitions. Restriction is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."

18. Thus, I hold that the import of impugned goods in this case fall under the category of import of restricted goods, in view of above discussion, therefore, the restricted goods so imported also fall within the definition of prohibited goods as contained in Section 2(33) of the Customs Act, 1962 and para 2.32 & 2.51 of the Import-Export Policy 2015-2020 and in of the Customs Act, 1962. Thus, the impugned consignment is liable to be confiscated under Section 111(d) of the Act.

19. For their various acts of omission and commission, I observe that the importer has also held themselves liable for penal action under Section 112(a)(i) of the Act for above said contraventions.

20. It is also noticed that as requested by importer the order dated 19.07.2023 has been passed for provisional release of the seized imported goods on furnishing of Bond of appropriate amount supported with Bank Guarantee. However, the importer has not come forward with Bond and Bank Guarantee and as such the goods were not released provisionally to the exported.

21. As the impugned goods are found to be liable for confiscation under section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods, which have been imported in violation of Foreign Trade Policy. The Section 125(1) ibid reads as under: -

> *"Section 125.Option to pay fine in lieu of confiscation. -Whenever confiscation of any goods is authorized 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 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:"*

22. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. From the perusal of above-mentioned provision, it emerges very clearly that in respect of prohibited goods, the proper officer may grant option to redeem the goods.

23. Accordingly, it is held that: -

(i) 236.480 M.T. of 'Waste Paper Corrugate Containers' valued at Rs.31,83,920/- imported vide impugned Bill of Entry is liable for confiscation under Section 111(d) of the Act.

(ii) The importer is liable for penal action under the provisions Section 112(a)(i) of the Act.

24. In view of the facts and circumstances of the case, I pass the following order in respect of Bill of Entry No. 5883568 dated 10.05.2023:

O R D E R

(i) I order confiscation of 236.480 M.T. of 'Waste Paper Corrugate Containers' valued at Rs.31,83,920/- under Section 111(d) of the Customs Act, 1962. I give an option to the importer to redeem the said goods on payment of Redemption Fine of **Rs.1,00,000/- (Rupees One Lakh Only)** in lieu of confiscation under Section 125 of the Customs Act, 1962. Further, the importer would be liable for payment of applicable duties and other levies/ charges in terms of Section 125(2) of the Customs Act, 1962.

(ii) I impose penalty of **Rs.25,000/- (Rupees Twenty-Five Thousand Only)** upon the importer under Section 112(a)(i) of the Customs Act, 1962 for violations of the provisions of law as discussed above.

18/4/24

(VISHAL MALANI)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-35/ICD-Sachana/O&A/HQ/2024-25 Date: 18.04.2024
DIN: 20240471MN0000712633

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Copy to: -

1. The Pr. Commissioner, Customs Commissionerate, Ahmedabad. (Kind Attn: RRA Section).
2. The Deputy/Assistant Commissioner, ICD Sachana, Customs, Ahmedabad.
3. Guard File.