

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT</p> <p>PHONE : 02838-271426/271428</p> <p>FAX :02838-271425</p>	
A	File No.	CUS/APR/BE/MISC/4119/2024-Gr 2-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AKM/259/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	17.01.2025
E	Noticee/Party/Importer/ Exporter	M/s SP Polymer A-10, Rooma Industrial Area, General Extension, Rooma, Kanpur - 208024
F	DIN No.	20250171MO000049934D

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 सं०-6 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.

Brief Facts of the Case

M/s SP Polymer (IEC No. 0608006459) having their address at A-10, Rooma Industrial Area, General Extension, Rooma, Kanpur - 208024 (*hereinafter referred to as the importer for the sake of brevity*) filed Bill of Entry No. 5580001 dated 13.09.2024 through their Custom Broker M/s Kashyap Shipping Pvt. Ltd. for clearance of 78,468 KGS of "Calcium Gluconate Technical Grade - Not for Medicinal Use" having an assessable value of Rs. 22,18,437/-. The said goods are covered under Bill of lading No. HASLC01240806058 dated 24.08.2024 and Commercial Invoice No. RY2024-0837 dated 14.08.2024. The details of goods are as under: -

Table- A

Item No. as per Bill of Entry	Description as per Bill of Entry & Commercial Invoice	Declared CTH	Net Weight (In KGS)	Assessable Value (in Rs.)
1	Calcium Gluconate Technical Grade - Not for Medicinal Use (Black)	29181610	78,468	22,18,437/-

2. On import of the said cargo, as informed by the importer, they applied for Dual Use NOC with Deputy Drug Controller, Ghaziabad on 29.09.2024. Further, they informed that the concerned officer raised queries and same were replied by them. But due to constrain of time, the application of the NOC was rejected and after two months ID of the Importer was blocked by the office after which they created new ID and applied for NOC again on 10.12.2024. After which the application of NOC was pending and Queries had been raised by the officer. Further, on specific request from the importer vide letter dated 30.12.2024, this office wrote a letter to CDSCO, Ghaziabad for status/remarks on the said application for NOC dated 10.12.2024 which was pending for approximate 1 month.

3. CDSCO, Ghaziabad vide their email dated 06.01.2025 has informed as under:

Please refer to your email dated 03/01/2025 on the subject

cited above. In this regard, it is informed that this office has received email dated 01/10/2024 from the O/o DDC(I), Ahmedabad wherein enclosing a letter No. 26A/1/2024-Admin/280 dt. 30/09/2024 of ADC(I), Ahmedabad port office mentioning that various firms including M/s SP Polymer has submitted digitally signed fabricated documents (Dual use Noc) for import clearance of Calcium Gluconate (Technical grade) and requested this office for necessary action in the matter.

Accordingly, this office has investigated the matter at the premises of M/s SP Polymer, Kanpur and observed that they were unable to produce any Dual use NOC issued by this office for clearance of their previously imported consignments. The Investigation reports have been forwarded to CDSCO (HQ), New Delhi for further direction.

In the meantime, M/s. SP Polymer has submitted dual use Noc applications for import of Calcium Gluconate vide File No. Dual Use/Noc/2024/125143 dt 04/11/2024 and Dual use/Noc/2024/125141 dt 04/11/2024, w.r.t. BOE 5580001 dt 13/09/2024 and 5433927 dt 05/09/2024 respectively.

The said applications were scrutinized & several times queries have been issued, however, firm has not submitted the requisite documents, hence this office is unable to issue Dual use NOCs.

Further, you are requested to contact the office of Assistant Drugs Controller (I), Air Cargo Complex, CDSCO Air Port office, Ahmedabad for ADC (I) NOC & further clarification in the matter.

3. From the above, it appears that the Importer for their goods declared as " Calcium Gluconate Technical Grade - Not for Medicinal Use" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- covered under item no. 1 of the said Bill of Entry were not able to produce the requisite documents to CDSCO authorities. Hence, CDSCO authorities are unable to issue Dual Use NOC for the clearance of the said consignments.

4 . The importer vide letter dated 30.12.2024 has informed that the product is having shelf life and after that the goods will be of no use. The

goods are lying at port in seashore are having moisture in the weather which will spoil the product. The delay in clearance or sending it back or re-exports is adding heavy loss by way of ground rent and it will be equivalent to the cost of the material and could not be feasible to get release of the goods as in that higher price the goods cannot be sold and also requested to allow them to re-export the goods covered under Item no. 1 of the said Bill of Entry and as detailed in Table-A above.

5. From the above it appears that the goods declared as "Calcium Gluconate Technical Grade - Not for Medicinal Use" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- appears to be liable for confiscation under Section 111 (d) of the Customs Act, 1962 in absence of dual use NOC from CDSCO and the importer is also liable for penal action under Section 112 (a)(i) of the Customs Act, 1962.

6. The importer vide their letter dated 30.12.2024 has requested to re-export the goods. They also submitted vide letter dated 16.01.2025 that they don't want Show Cause Notice and personal hearing in this case.

7. LEGAL PROVISIONS APPLICABLE IN THE CASE:

Following provisions of law are applicable in the present case:

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;

SECTION 111 (d) OF THE CUSTOMS ACT, 1962:

111. Confiscation of improperly imported goods etc.

The following goods brought from the place outside India shall be liable to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water 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.

SECTION 112(a) OF THE CUSTOMS ACT, 1962:

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, 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;*

SHOW CAUSE NOTICE & PERSONAL HEARING

8. The importer vide letter dated 16.01.2025 submitted that they don't want Show Cause Notice and personal hearing in the matter. Further, they have requested to re-export the "*Calcium Gluconate Technical Grade - Not for Medicinal Use*" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/-

DISCUSSION AND FINDINGS

9 . I have carefully gone through the case records. The importer vide letter dated 16.01.2025 have requested for waiver of the show cause notice and personal hearing in the matter. Thus, I find that principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records. The points to be decided in the instant case are:

- I. Whether the goods i.e. "*Calcium Gluconate Technical Grade - Not for Medicinal Use*" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- as detailed in Table-A above are liable for confiscation under Section 111(d) of the Customs Act, 1962.
- II. Whether the importer is liable for penal action under 112(a) of Customs Act, 1962.

9.1 I find that on import of the goods, the importer applied for Dual Use NOC with Deputy Drug Controller, Ghaziabad. The goods declared as *Calcium Gluconate Technical Grade - Not for Medicinal Use* weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- covered under item no. 1 of the said Bill of Entry and as detailed in Table-A above, was not given Dual Use NOC by the CDSCO authorities stating that "The said applications were scrutinized & several times queries have been

issued, however, *firm has not submitted the requisite documents, hence this office is unable to issue Dual use NOCs*".

9.2 I find that the importer vide letter dated 30.12.2024 has requested to allow them to re-export the goods viz. 78,468 KGS of *"Calcium Gluconate Technical Grade - Not for Medicinal Use"*.

9.3 From the above, I find that the CDSCO did not issue Dual Use NOC for the goods i.e. *"Calcium Gluconate Technical Grade - Not for Medicinal Use"* weighing 78,468 KGS. Prima face, it is seen that said cargo needs Dual Use NOC to be cleared, subsequently without attracting the provisions of G. S. R. 604(E) dt 24.08.2001. Hence, the imported goods becomes liable for confiscation under Section 111(d) of the Customs Act, 1962.

9.4 I find that the importer has requested to re-export the goods. The provisions of Drugs and Cosmetics Act, 1940 are not specifically restricting the re-export of such consignments where dual use NOC is not being granted. Therefore, the option of re-export can be availed by the Importer after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962. 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".

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 re-imported goods.

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

ORDER

10.1 I order for confiscation of imported goods declared as " *Calcium Gluconate Technical Grade - Not for Medicinal Use*" weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- (Rupees Twenty Two Lac Eighteen Thousand Four Hundred Thirty Seven Only) imported vide Bill of Entry No. 5580001 dated 13.09.2024 under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to re-export the confiscated goods on payment of redemption fine of Rs. 1,00,000./- (Rupees One Lakh Only) under Section 125 of the Customs Act, 1962.

10.2 I impose a penalty of Rs. 50,000 /-(Rupees Fifty Thousand Only) on the importer M/s SP Polymer (IEC No. 0608006459) under Section 112 (a) (i) of the Custom Act, 1962.

10.3 I also allow the importer to re-export the goods declared as *Calcium Gluconate Technical Grade - Not for Medicinal Use* weighing 78,468 KGS having Assessable Value of Rs. 22,18,437/- covered under item no. 1 of the said Bill of Entry.

11. 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.

(Amit Kumar Mishra)
Additional Commissioner
Import Assessment
Custom House, Mundra

F.No. CUS/APR/BE/MISC/4119/2024-Gr. 2
17.01.2025

Date:

To,
M/s SP Polymer
(IEC No. 0608006459)
A-10, Rooma Industrial Area,
General Extension, Rooma,
Kanpur - 208024

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