

**OFFICE OF THE COMMISSIONER****CUSTOM HOUSE, KANDLA****NEAR BALAJI TEMPLE, NEW KANDLA****Phone : 02836-271468/469 Fax: 02836-271467****DIN- 20241271ML0000313113**

A	File No.	GEN/ADJ/ADC/2699/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/VS/27/2024-25
C	Passed by	Vishwajeet Singh Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	28.12.2024
E	Date of Issue	28.12.2024
F	SCN NO. & Date	Waiver of Show Cause notice
G	Noticee / Party / Importer / Exporter	M/s. Khodiyar Marketing Pvt.Ltd and others

1. यहमूलआदेशसंबन्धितकोनि.शुल्कप्रदानकियाजाताहै।

This Order - in - Original is granted to the concerned free of charge.

2. यदिकोईव्यक्तिइसमूलआदेशसेअसंतुष्टहोतोवहसीमाशुल्कअपीलनियमावली 1982 केनियम 3 केसाथपठितसीमाशुल्कअधिनियम 1962 कीधारा12 8A केअंतार्तप्रपत्रसीए- 1- मेंचारप्रतियोमेनीचेबताएगएपतेपरअपीलकरसकताहै-

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:

“सीमाशुल्कआयुक्त(अपील),

वी 7मंजिल,मृदुलटावर,टाइम्सऑफइंडियाकेपीछे,आश्रमरोड,अहमदाबाद380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,

Ashram Road, Ahmedabad-380009."

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 परन्यायालय शुल्क अधिनियम के तहत

5/-

रूपएकाटिकटलगा 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 be 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 मद्दसं-6 में निर्धारित 5/- रूपये 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 डूटी/ 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 के वल 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:-

The importer M/s. Khodiyar Marketing Private Limited having address at First Floor, Office No. 124-125, Flat No. 54/1, Sadguru Empire, Adani Port Road, Dhrub, Mundra, Kutch-370421 had filed B/E No. 5879075 dated 30.09.2024 for clearance of 321.86 MT Fuel Oil through the Customs Broker M/s. Rudra Shipping Services, Gandhidham. The importer classified the goods under CTH 27101951 and assessable value of the goods was declared as **Rs.86,73,741/-**. The faceless assessment officer had given first check in the Bill of Entry with order to draw sample and forwarded the same to CRCL for testing to ascertain the nature of cargo.

2. Examination of goods was carried out at the CWC, CFS, Kandla and in the presence of the Authorised Representative of Customs Broker. The goods/ cargo of the said bill of entry was stuffed in 14*40 feet Containers. Representative samples were drawn by the docks officers, and the same were forwarded to the Central Revenue Control Laboratory, Vadodara for testing of the subject goods under T.M. No. 1239124 dated 03.10.2024, and examination report was submitted in the EDI system. The faceless assessment officer had raised query in the Bill of Entry to the importer for uploading Test Report in the System. The CRCL Vadodara had issued Test Report No. RCL/Kandla/IMP/3829/04.10.2024 dated 18.10.2024. The Customs Broker M/s. Rudra Shipping Services had uploaded the said CRCL, Vadodara Test Report and submitted query reply in the system on 19.10.2024. The faceless assessment officer had pushed the Bill of Entry to Port Assessment Group (PAG) (i.e. Custom House, Kandla) by mentioning discrepancies between the test report uploaded by the Customs Broker and furnished by the CRCL, Vadodara. The Assistant Commissioner, Gr-1, Customs House, Kandla vide his letter F.No. CUS/SIIB/MISC/728/2024-GR1-O/o-Commr-Cus-Kandla dated 30.10.2024 had referred the issue to the SIIB Section for detail investigation.

3. From the Test Reports, uploaded in the System and sent by CRCL, Vadodara to this office on mail id: commr-cuskandla@nic.in, it was seen that in the Test Report Lab No. RCL/Kandla/Imp/ 3829/ 04.10.2024 dated 18.10.2024, issued by the Chemical Examiner, CRCL, Vadodara it was mentioned that: "*It is off specification Fuel oil / waste oil. The sample was further tested as per Circular 33/2001-Cus dated 4th June 2001. It is hazardous waste*". While in the Test Report, uploaded by the CB in the system vide IRN No. No. 2024101900069800, it was mentioned that: "*Above tested parameters sample u/r meet the requirement of fuel oil IS: 1593:2018*". In addition to this, Ash contents had also been altered from 0.17% to 0.07%.

For better comparison, genuine CRCL, TEST Report is placed hereunder:

Lab. No. RCL/KANDLA/IMP/3829/04.10.2024

T.M. No. 1239124/03.10.2024

B/E No. 5879075/30.09.2024

Report:

The sample as received is in the form of blackish brown oily liquid

It is composed of mixture of hydrocarbon more than 70 % by wt. having following constants:

Density at 15°C=0.9587 gm/cm³

Flash point (PMCC) = 86.0°C

Kinematics Viscosity at 50°C =234 cSt

Ash content=0.17% by wt.

Water content = Nil

Sediment =0.38%by wt.

Acidity (inorganic) =Nil

Gross Calorific value (GCV)= 10291 cal/gm

Sulphur Content % =1.646

PCBs, mg/Kg =1.87

PAHs, Percentage = 0.007

Lead Content, PPM = 0.82

Arsenic content, PPM =ND

Cadmium + Chromium + Nickel, PPM =49.04

Above tested parameters sample u/r does not meet the requirement of fuel oil IS: 1593:2018, in respect of ash Content and sediment.

It is off specification fuel oil/ waste oil. The sample was further tested as per Circular 33/2001-Cus dt.04th June2001. It is hazardous waste.

Sealed remnant sample returned.

Mh
18-10-2024

Chemical Examiner Gr. II
Central Excise & Customs Laboratory,
Vadodara
GARIYA
Chemical Examiner Gr. II

seen
Khodiyar Marketing Pvt. Ltd.

seen
M. Bhupathi
Director

seen
M. Bhupathi
14/11/2024

Altered / edited CRCL Test Report, which was uploaded / e-sanchit in the EDI System is as under:

Lab. No RCL/KANDLA/IMP/3829/04.10.2024

T.M. No. 1239124/03.10.2024

B/E No. 5879075/30.09.2024

Report:

The sample as received is in the form of blackish brown oily liquid

It is composed of mixture of hydrocarbon more than 70 % by wt. having following constants:

Density at 15°C = 0.9587 gm/cm³

Flash point (PMCC) = 86.0°C

Kinematics Viscosity at 50°C = 234 cSt

Ash content = 0.07% by wt.

Water content = Nil

Sediment = 0.38% by wt.

Acidity (inorganic) = Nil

Gross Calorific value (GCV) = 10291 cal/gm

Sulphur Content % = 1.645

PCBs, mg/Kg = 1.87

PAHs, Percentage = 0.007

Lead Content, PPM = 0.82

Arsenic content, PPM = ND

Cadmium + Chromium + Nickel, PPM = 49.04

Above tested parameters sample u/r meet the requirement of fuel oil IS:

1593:2018.

Seal
M. Bhatia
14/11/2024

Sealed remnant sample returned.

M. Bhatia
14.10.2024
Chemical Examiner Gr. II
Central Excise & Customs Laboratory,
Vadodara, GUJARAT
Chemical Examiner Gr. II



Signature Not Verified

Digital signed by BHARAT JETHALAL GALA
Date: 2024.10.19 14:00:04 IST
Reason: Secure Document
Location: India

Khodiyar Marketing Pvt. Ltd.

Seal
Director

For the sake of convenience, parameters of both the above CRCL, Test Reports (genuine and altered) are summarized in the below mentioned table:

Constants	AS per CRCL Report	As per uploaded Altered report
Density at 15 °c	0.9587 gm/cm3	0.9587 gm/cm3
Flash Point (PMCC)	86.0 °c	86.0 °c
Kinematics Viscosity at 50° c	234 cSt	234 cSt
Ash content	0.17 by wt.	0.07% by wt.
Water Content	Nil	Nil
Sediment	0.38% by wt.	0.38% by wt.
Acidity (inorganic)	Nil	Nil
Grass Calorific value(GCV)	10291 cal/gm	10291 cal/gm
Sulphur Content%	1.646	1.646
PCBs, mg/Kg	1.87	1.87
PAHs, Percentage	0.007	0.007
Lead Content, PPM	0.82	0.82
Arsenic content, PPM	ND	ND
Cadmium +Chromium+Nickel, PPM	49.04	49.04
Conclusion	It is off specification Fuel oil / waste oil. The sample was further tested as per Circular 33/2001-Cus dated 4th June 2001. It is hazardous waste	Above tested parameters sample u/r meet the requirement of fuel oil IS: 1593:2018

3.1 On comparing the both Test Reports, (uploaded by the CB and CRCL) as summarized in the above table, it was very clear that the Test Report, e-sanchit by the Customs Broker had been altered / tempered to the above extent and submitted query reply with intent to get clearance of the cargo on the basis of altered test report.

3.2 In the Bill of Entry No. 5879075 dated 30.09.2024, the cargo was declared as Fuel Oil and classified under CTH-27101951, while as per above Test Report the cargo was found as "off specification Fuel oil / waste oil. The sample was further tested as per Circular

33/2001-Cus dated 4th June 2001. It is hazardous waste", which would correctly classify under CTH-27109100. As per import policy, import of waste oil falls under restricted category.

3.3 In view of above, it appeared that the importer had mis-declared the imported goods as fuel oil which was actually Waste Oil. Therefore, the goods imported under above Bill of Entry No. 5879075 dated 30.09.2024 appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962 and hence the goods were seized by SIIB vide Seizure Memo / Panchnama dated 09.11.2024 (RUD-I) and handed over to the authorized person of CWC, CFS, Kandla under Supratnama dated 09.11.2024 for safe custody and investigation in the matter has been initiated.

4.0 Statement of Shri Bharat Jethalal Gala, F card holder of the Customs Broker firm M/s. Rudra Shipping Services, Gandhidham was recorded under Section 108 of the Customs Act, 1962 (RUD-II). Under the said statement dated 09.11.2024, Shri Bharat Jethalal Gala has stated that: on behalf of the importer M/s. Khodiyar Marketing Private Limited, Mundra they have filed Bill of Entry No. 5879075 dated 30.09.2024 with Custom House, Kandla for import of 321.86 MT Fuel Oil in 14 containers from Libya Arab Republic; the importer M/s. Khodiyar Marketing Pvt. Ltd., Mundra on their letter dated 30.09.2024 had authorized them to file the documents with the customs, Kandla; they have verified the KYC and self certified copy of the documents (viz. Authority Letter, KYC form on letterhead of the importer, GST registration, PAN card, IEC and cancelled cheque), which were provided to him by Mr. Bhupathi; as per Mr. Bhupathi's instructions, they have raised an e-invoice dated 04.10.2024 for 11 containers and have received payment for the same; he directly did not know the importer and Mr. Bhupathi but he was introduced by his one friend; Mr. Bhupathi from his mobile number- 9879635950 whatsapp the said Test Report on 18.10.2024 on his mobile No. 9825225696 and message: "**Please e sanchit and query reply**"; on 19.10.2024, Mr. Bhupathi sent the screen shot of the ICEGATE Bill of Entry tracking status showing pending status of the BoE to him; as per the directions of Mr. Bhupathi they have uploaded the Test Report and give query reply in the system on 19.10.2024; as per original Test Report, the imported cargo in question is found to be Hazardous Waste oil and import of which falls under restricted category; he was totally innocent as the edited / altered Test Report was provided to him by Mr. Bhupathi, who might have altered the same; alteration in the Test Report made so cleverly that without original Test Report nobody can differentiate; to get clearance of the restricted category cargo, the said Test Report might have been altered / tempered either by the importer or by Mr. Bhupathi, who directed me to upload the same and give query reply in the system; at the time of filing of Bill of Entry they have opted first check since their intention was very clear that they want clearance of the cargo only after getting Test Report and clearance by Customs; he is innocent in this case and requested to not to impose any penalty upon him and take strict action against the actual culprit, who tempered with the CRCL, Test Report.

4.1 Authority letter dated 30.09.2024, printed on the letterhead of the importer M/s. Khodiyar Marketing Pvt. Ltd., Mundra, submitted by Shri Bharat Jethalal Gala during his above statement dated 09.11.2024 as an evidence that he was duly authorized by the importer M/s. Khodiyar Marketing Pvt. Ltd., Mundra is placed hereunder:



Khodiyar Marketing Pvt. Ltd.

Date: 30.09.2024

To,
The Deputy Commissioner of Customs
Policy Section,
Custom House Mundra
Mundra.

SUBJECT: Letter of Authority for custom clearance of Export/ Import consignments

We, KHODIYAR MARKETING PRIVATE LIMITED Address FIRST FLOOR, OFFICE NO. 124-125, R.S.N. 541, SADGURU EMPIRE, VILLAGE DHURUB, MUNDRA, KACHCHH, MUNDRA, GUJARAT- 370421.

We have by authorize M/S RUDRA SHIPPING SERVICES having CHA License No. ACLPG4464ICH8881 and its affiliates (together hereinafter "RUDRA SHIPPING SERVICES"), which expression shall mean and include their respective holding company, their affiliate and all their duly designated customs broker and other agents to:

- A.) Act as our Custom broker and to do all acts necessary on our behalf for clearing our Imports/Exports consignment and Collect delivery order from shipping line/ airline of all import shipments consigned to us from time to time through the air or sea mode.
- B.) To file all documents that may be necessary for customs clearance based on the declaration and information regarding the goods provided to RUDRA SHIPPING SERVICES by us.

We also hereby declare that all our shipments, including our present consignment under clearance through your office, are of legitimate Import/Export and without any express violation of Rules & Procedures under Custom Act 1962, Foreign Exchange Regulation Act (FERA), Foreign Exchange Management Act (FEMA) & The Foreign Trade (Development and Regulation) Act, 1992 etc.

We also further declare that our shipment's docs do not contain any contraband or prohibited articles we shall also hold ourselves the sole responsible for any discrepancy / mis-declaration found in our documents or goods for which we are seeking clearance through M/S RUDRA SHIPPING SERVICES and his designated custom broker and that they will not be responsible or liable in whatsoever manner. In case of any legal discrepancy arising from our shipment in present as well as future, we shall hold ourselves solely responsible and M/S. RUDRA SHIPPING SERVICES and his designated custom broker shall be in no way responsible or liable which would include any less charges without levy, dues of customs, port, shipping companies, transhippers, octroi, state tax, any Govt. or statutory taxes / penalties etc.. This Letter of authority is issued in terms of Notification No. 041/2018 d/L 14.05.2018 which is also otherwise briefly known as CBLR, 2018.

We also enclose self-verified photocopies of I.C.C. Invoice, Packing List, Bill of Lading, etc. towards our request for clearance of consignment through your port. We also further declare that we shall remain present for any hearing which custom authority may grant from time to time.

This Authorization shall remain valid and continue till revoked and shall cover all our shipments addressed to our various offices / branches in India.

There is No Dues pending of our Previous Custom Broker for the services we have taken till now.

For, KHODIYAR MARKETING PRIVATE LIMITED



Khodiyar Marketing Pvt. Ltd.

Director
17/11/2024
(Ganesh Chaturthi)



Seal
M. B. Bhupathi
14/11/2024

Gala
09/11/24

4.2 Whatsapp screen shot dated 18.10.2024, submitted by Shri Bharat Jethalal Gala during his above statement dated 09.11.2024 as an evidence that CRCL Test Report dated 18.10.2024 was provided to him by Mr. M. Bhupathi on his whatsapp, are placed hereunder:

1:38

0.40 YD 241 54%



M Bhupathi



18 October 2024

Please check email
report

10:35 am

Yes

10:54 am ✓

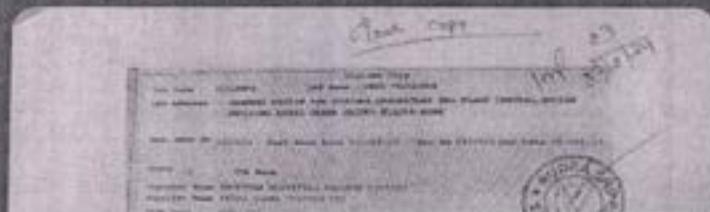
Yesterday mail sent
from baroda

11:11 am

Please update once
receive copy

12:38 pm

» Forwarded



Seen
M.Bhupathi
14/11/2024

Bala
09/11/24



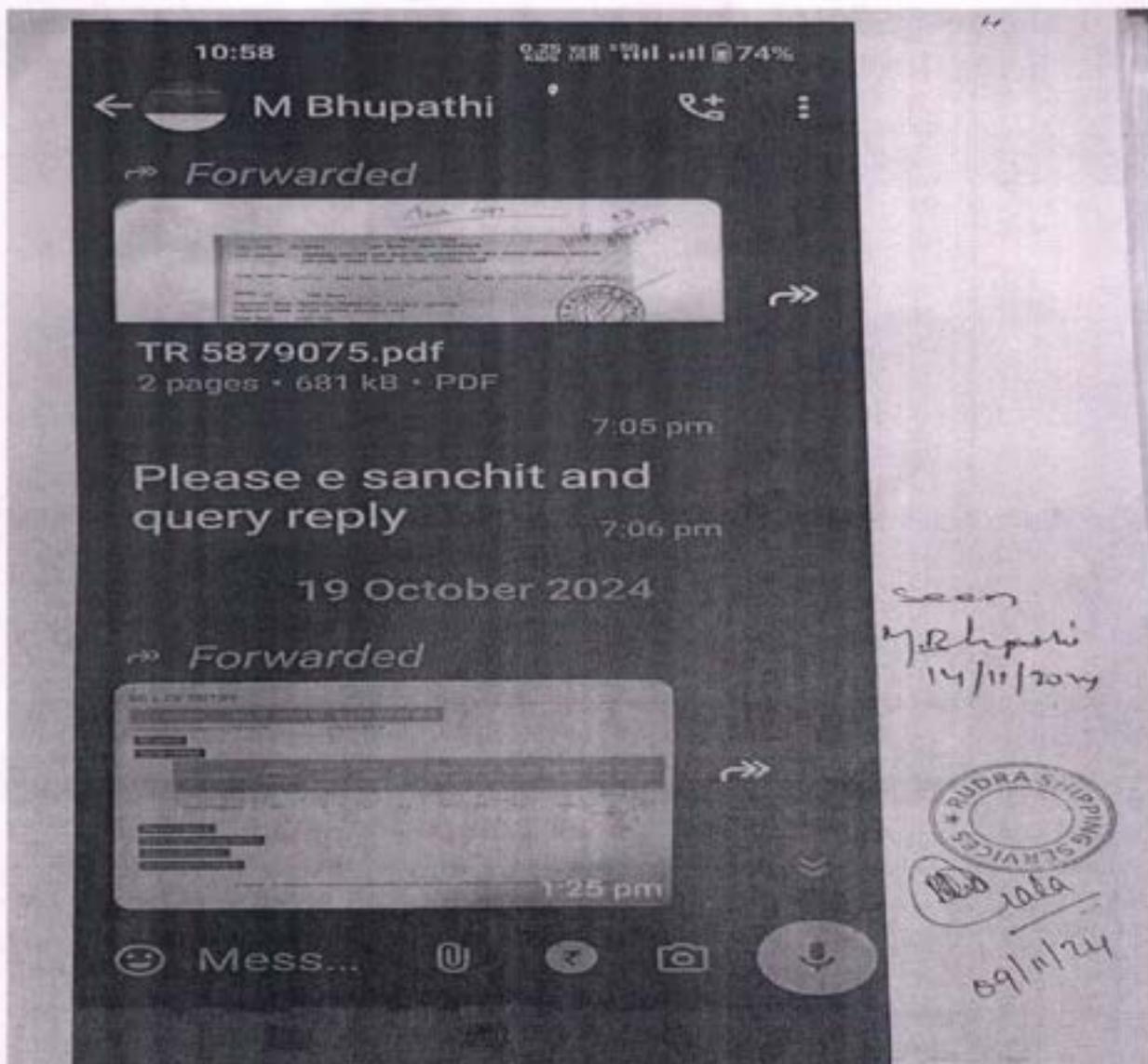
TR 5879075.pdf

2 pages • 681 kB • PDF

7:05 pm

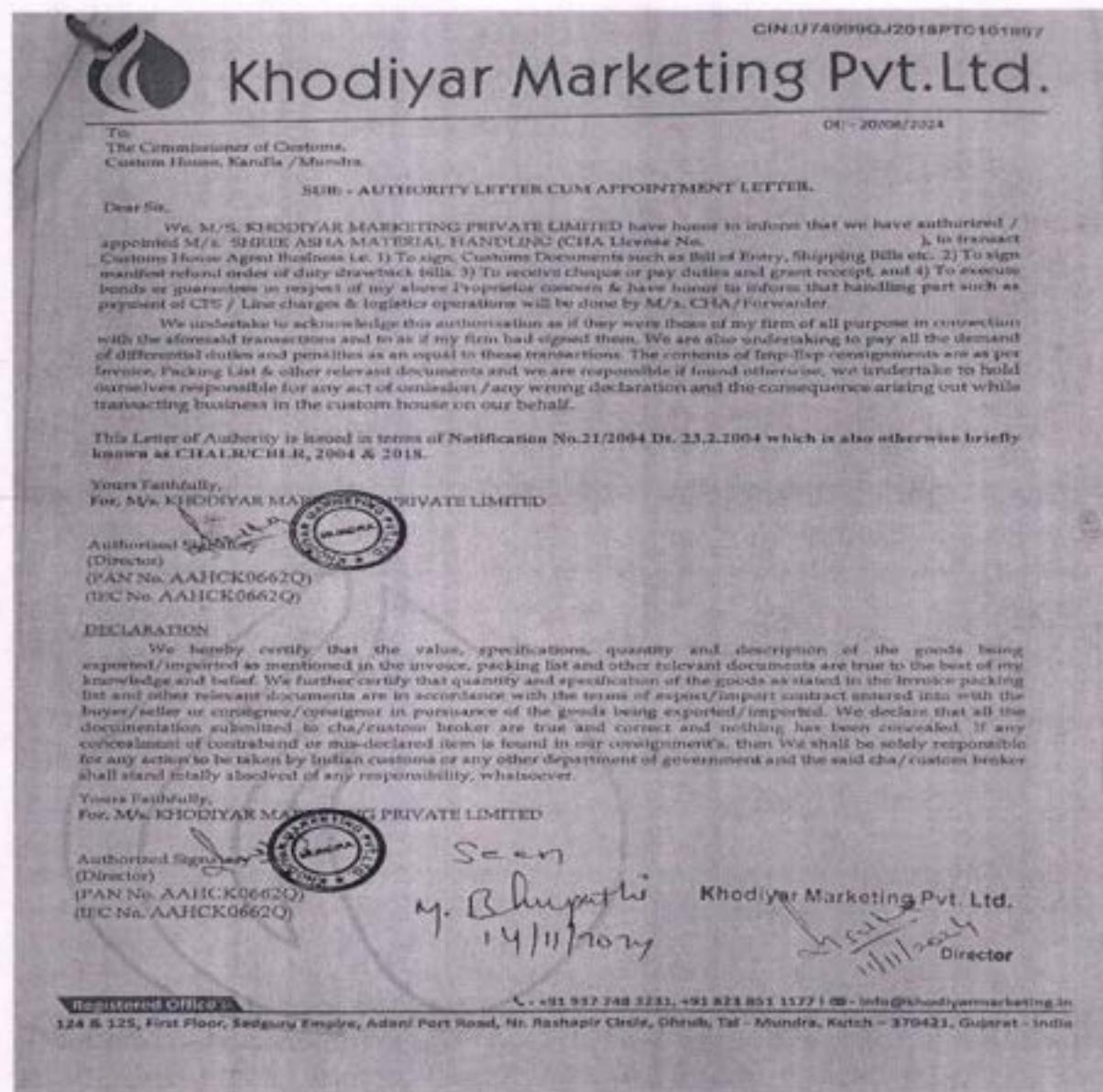
😊 Mess...





5.0 Statement of Shri Gaurang Hareshbhai Sathwara, Director and partner in the importer's firm M/s. Khodiyar Marketing Private Limited, Office No. 124-125, Flat No. 54/1, Sadguru Empire, Village-Dhrub, Mundra, Kutch-370421, was recorded under Section 108 of the Customs Act, 1962 (RUD-III). Under the said statement dated 11.11.2024, Shri Gaurang Haresh bhai has stated that: since 2018, they are engaged in import of Petroleum Products viz. Fuel Oil, Base Oil, MHO etc.; this is their first import consignment at Kandla Port; they do only trading of the imported cargo in domestic market; they do not have any Licence / permission from DGFT/ MOEF / GPCB for import of hazardous category products; he do not know any person of the CB M/s. Rudra Shipping Services, Gandhidham and they have not appointed them for customs clearance of their present consignment at Kandla Port; he vide his letter dated 20.08.2024, has appointed M/s. SHREE ASHA MATERIAL HANDLING and also give KYC documents to Mr. Maddu Bhupathi for clearance of Fuel / Base Oil at Kandla Port; he think that Mr. Bhupathi has given KYC documents of their company to M/s. Rudra Shipping Services, Gandhidham for clearance of the cargo at Kandla Port and accordingly on

the basis of that documents Bill of Entry No. 5879075 dated 30.09.2024 was filed by the CB M/s. Rudra Shipping Services; he has not issued the authorization letter dated 30.09.2024 to M/s. Rudra Shipping Services, Gandhidham and the letterhead, used in the said authorization letter dated 30.09.2024 is not of his company letterhead; the letterhead used in his letter dated 20.08.2024 is printed on their real / original letterhead, he also submitted self-certified copy of the said letter dated 20.08.2024, which is re-produced hereunder:



5.1 Some relevant question and answers of Shri Gaurang bhai statement dated 11.11.2024 are re-produced hereunder:

Q.12 Please peruse copy of the letter dated 30.09.2024, submitted by M/s. Rudra Shipping Services that M/s. Khodiyar Marketing Pvt. Ltd. Vide their said letter has appointed them as Customs Broker for clearance of the imported consignment at Kandla Port.

While, herein above you have stated that you have not appointed M/s. Rudra Shipping Services. Please explain.

Ans. I carefully peruse the letter dated 30.09.2024 (submitted to you by M/s. Rudra Shipping) and found that the letterhead, used in this letter dated 30.09.2024 is not of my company letterhead. The letter dated 20.08.2024 as submitted to you is printed on real / original letterhead by which it may clearly seen that our letterhead bears the watermark of company's logo and at foot note registered office address is also mentioned but in the said letter dated 30.09.2024, there is no watermark and no office address. Moreover font pattern of the company's name is also different. Therefore, it is clear that the said letter dated 20.08.2024 is fake and appears to be prepared by Mr.Bhupathi by editing to engage Custom Broker at Kandla Port to get customs clearance of the imported cargo in question.

Q.13 The proprietor of M/s. Rudra Shipping Services in his statement dated 09.11.2024 has stated that they have raised invoice to you (M/s. Khodiyar Marketing Pvt. Ltd.) for clearance of the cargo in question and they have also received the payment. What do you say about this?

Ans. Sir, neither we have appointed M/s. Rudra Shipping Services nor we have received and any invoice from them and we have not made any payment to them. I give the clearance work to Mr.Bhupathi on fix clearance charges @ 11000/- per container (+) GST. Hence, the customs clearance work at Kandla Port might have been further allotted by Mr.Bhupathi to M/s. Rudra Shipping Services at reduced rate and their bill might have been reimbursed by Mr.Bhupathi and not by me.

Q.14 Have you seen the Test Report given by the CRCL, Vadodara of the samples drawn from the consignment imported by you under Bill of Entry No. 5879075 dated 30.09.2024?

Ans. Previously, I have not seen the CRCL, Vadodara Test Report in r/o my consignment in question. Verbally around 18/19-11-2024, I have been informed by Mr.MadduBhupathi that CRCL Test Report has been come and cargo will get clearance within 1-2 days.

Q.15 Please peruse the CRCL, Vadodara Test Report dated 18.10.2024, which is uploaded by your Customs Broker in the system vide IRN No. 2024101900069800 and the CRCL, Vadodara Test Report dated 18.10.2024 received by this office through mail directly from CRCL, Vadodara. Do you see any difference between both of the reports?

Ans. I have perused both the Test Reports carefully and put my dated signature in token. On plain reading / perusal of both the Test Reports, both are appearing exactly same by font, line spacing, chemical examiner signature and stamp etc. But on carefully reading, it is noted that Ash content and conclusion report in the Test Report, as uploaded in the EDI System, differ than the original Test Report. Here it can be said that the Test Report, uploaded by the CB in the system, was an altered / tempered Test Report.

1.1 In the statement dated 11.11.2024, Shri Gaurang bhai has further stated that: he knows Mr. Maddu Bhupathi since 2018; Mr. Maddu Bhupathi is operating two firms (i) M/s. SHREE ASHA MATERIAL HANDLING (ii) M/s. Arab Warehousing Services, Office No. 93, 2nd Floor, Plot No. 93, Rishabh Corner, Sector-8, Gandhidham (GSTN0

24ACBFA8327M1ZA); on going through the whole scenario it appears that in this case the CRCL Test Report might have been altered / tempered by Mr. M. Bhupathi, who also gives it to the CB without his knowledge and in this case they are innocent.

6.0 In response to the Summons dated 11.11.2024, Shri Maddu Bhupathi has appeared to give his voluntary statement under Section 108 of the Customs Act, 1962 (**RUD-IV**), wherein he inter-alia stated that: he is operating two firms (i) M/s. SHREE ASHA MATERIAL HANDLING (ii) M/s. Arab Warehousing Services and engaged in transportation and freight forwarder business; he knows Mr. Gaurang Hareshbhai Sathwara of M/s. Khodiyar Marketing Private Limited, Mundra since 2018; he do not have any Customs Broker Licence but arranged clearance of some import consignments through other Customs Brokers; personally, he do not know any person of M/s. Rudra Shipping Services, Gandhidham; Mr. Vishal Nagar introduced me with the Customs Broker Sh. Bharat Jethalal Gala of M/s. Rudra Shipping Services, Gandhidham; he give letter dated 30.09.2024 and other KYC documents (viz. PAN No., GST Reg. No., IEC number) of M/s. Khodiyar Marketing Pvt. Ltd. to Sh. Bharat Jethalal Gala of M/s. Rudra Shipping Services, Gandhidham and asked him for filing of Bill of Entry for custom clearance of the imported fuel oil consignment; Sh. Gaurangbhai vide letter dated 20.08.2024 has authorized my firm M/s. Shree Asha Material Handling to transact Custom House Agent Business and to sign Customs Documents such as Bill of Entry, Shipping Bills etc.; Sh. Gaurangbhai of M/s. Khodiyar Marketing Pvt. Ltd. has not issued letter dated 30.09.2024, **by editing in computer**, he prepared the same to appoint M/s. Rudra Shipping Services, Gandhidham as Customs Broker for clearance of the imported consignment of Fuel Oil at Kandla Port; he edited / altered CRCL Test Report and forward the same to Mr. Bharatbhai of M/s. Rudra Shipping Services from his mobile No. 9879635950 and message to upload the same and give query reply to the Bill of Entry No. 5879075 dated 30.09.2024 to get clearance of the Bill of Entry from assessment; M/s. Rudra Shipping Services, Gandhidham was not aware about tempering in the said Test Report, they only uploaded the copy, which was sent by him on whatsapp to Sh. Bharatbhai at 07:05 pm on 18.10.2024; he had made online payment to M/s. Rudra Shipping Services, Gandhidham against their e-invoice from his firm M/s. Arab Warehousing Service account and Mr. Gaurangbhai was not aware about this; Sh. Gaurangbhai was unaware about the appointment of M/s. Rudra Shipping Services, Gandhidham as Customs Broker for clearance of their imported Fuel Oil consignment at Kandla Port; Mr. Gaurangbhai has issued authorization letter dated 20.08.2024 in favour of his firm M/s. Shree Asha Material Handling, but **by tempering / editing he prepared authorization letter dated 30.09.2024 on the fake letterhead of M/s. Khodiyar Marketing Pvt. Ltd., Mundra and authorize M/s. Rudra Shipping Services, Gandhidham as Customs Broker at Kandla Port**;

6.1 Some relevant question and answers of Shri Maddu Bhupathi statement dated 14.11.2024 are re-produced hereunder:

Q. 10 Sh. Gaurangbhai in his statement dated 11.11.2024 has stated that he has not issued the letter dated 30.09.2024, by which M/s. Khodiyar Marketing Pvt. Ltd. Has appointed M/s. Rudra Shipping Services has been appointed as CHA for clearance of their import consignment at Kandla Port. Pl. Explain as to who has prepared this letter on fake

letterhead of M/s. Khodiyaar Marketing Pvt. Ltd. and give it to the CB M/s. Rudra Shipping Services, Gandhidham?

Ans. As I already stated herein above that I have given this authority letter to Sh. Bharatbhai of M/s. Rudra Shipping Services, Gandhidham. I agree that Sh. Gaurangbhai of M/s. Khodiyaar Marketing Pvt. Ltd. has not issued this letter but, by editing in computer, I have prepared the same to appoint them as Customs Broker for clearance of the imported consignment of Fuel Oil at Kandla Port.

Q.11 Why you prepared fake letter dated 30.09.2024 to appoint M/s. Rudra Shipping Services as Customs Broker for clearance of imported consignment of M/s. Khodiyaar Marketing Pvt. Ltd. at Kandla Port? What was your interest?

Ans. I have no extra benefit but to show my performance and to keep their business continue with me, I have prepared said authoritative letter dated 30.09.2024 by editing in computer.

Q.12 Please peruse the CRCL, Vadodara Test Report, which is sent by you on whatsapp to Mr.Bharatbhai of M/s. Rudra Shipping through your mobile number- 9879635950 to upload in the System and give query reply to the Bill of Entry No. 5879075 dated 30.09.2024. Have you forwarded this Test Report to Mr.Bharatbhai of M/s. Rudra Shipping and message him to upload the same and give query reply to the Bill of Entry No. 5879075 dated 30.09.2024?

Ans. After perused the said Test Report and in token I put my dated signature on it. I accept that I have whatsapp the said altered CRCL Test Report and message Mr.Bharatbhai of M/s. Rudra Shipping and message him to upload the same and give query reply to the Bill of Entry No. 5879075 dated 30.09.2024 to get clearance of the Bill of Entry from assessment.

Q.13 Please peruse the statement dated 09.11.2024 of Mr.Bharatbhai of M/s. Rudra Shipping Services and screenshot printouts submitted by him during his statement, wherein he stated that you have provided him the edited / altered CRCL Test Report and message him to upload the same and give query reply. Please state whether you are agree with his submissions and also give details of other documents you provided to him for filing of Bill of Entry.

Ans. I carefully perused the statement dated 09.11.2024 of Mr.Bharatbhai of M/s. Rudra Shipping Services, Gandhidham and in token I put my dated signature on it. After perusal, I fully agree with the submissions, which have been stated by him in his statement dated 09.11.2024. Here, I confess that I have edited / altered the CRCL Test Report dated 18.10.2024 and forwarded the same to Sh. Bharatbhai of M/s. Rudra Shipping Services, Gandhidham for getting clearance of the said Bill of Entry from faceless assessment. M/s. Rudra Shipping Services, Gandhidham was not aware about tempering in the said Test Report, they only uploaded the copy, which was sent by me on whatsapp to Sh. Bharatbhai at 07:05 pm on 18.10.2024. For filing of Bill of Entry, I have provided other required documents viz. Commercial Invoice, Packing List, Bill of Lading, Country of Origin, Load Port analysis report etc. to the Customs Broker M/s. Rudra Shipping Services as I received from the importer M/s. Khodiyaar Marketing Pvt. Ltd.

Q.14 Please peruse copy of the e-invoice No. RSS/A/0032 dated 04.10.2024, issued by M/s. Rudra Shipping Services, Gandhidham to M/s. Khodiyar Marketing Pvt. Ltd., Mundra. Sh. Bharatbhai in his statement dated 09.11.2024 has stated that he has received payment against this invoice. Have you made payment of this invoice to M/s. Rudra Shipping Services, Gandhidham?

Ans. I peruse the said e-invoice and confirm that I have made online payment of this invoice to M/s. Rudra Shipping Services, Gandhidham from my firm M/s. Arab Warehousing Service account and Mr.Gaurangbhai was not aware about this.

Q.15 Please peruse statement dated 11.11.2024 of Sh. Gaurangbhai and offer your comments on his submissions?

Ans. I carefully perused the statement dated 11.11.2024 of Mr.Gaurangbhai of M/s. Khodiyar Marketing Pvt. Ltd., Mundra and in token I put my dated signature on it. After perusal, I state that he was unaware about the appointment of M/s. Rudra Shipping Services, Gandhidham as Customs Broker for clearance of their imported Fuel Oil consignment at kandla Port. Mr.Gaurangbhai has issued authorization letter dated 20.08.2024 in favour of my firm M/s. Shree Asha Material Handling. But by tempering / editing I have prepared authorization letter dated 30.09.2024 on the fake letterhead of M/s. Khodiyar Marketing Pvt. Ltd., Mundra and authorize M/s. Rudra Shipping Services, Gandhidham as Customs Broker at Kandla Port.

Q.17 Anything other do you want to submit here.

Ans. In this case the importer and the Customs Broker M/s. Rudra Shipping Services has not done anything wrong at their part. All the editing / tempering in the documents, as stated above, were done by me for getting early clearance of the import consignment in question to show my performance before the importer by getting early custom clearance of their import consignment at Kandla Port to get their import work permanently. Here I confess the acts and omissions done by me and accept my mistakes in this case. However, I request you take lenient view as it is my first mistake and here I assure you to not to do anything wrong in my future.

7.0 The goods were declared by the importer as "Fuel Oil" (CTH-27101959) which attract BCD @2.5%, SWS@10% and IGST @18%. Whereas, the goods imported by the importer vide above bill of entry are found to be "Waste Oil (Hazardous)", which is properly classifiable under CTH 27109100 (others) which attract BCD@5%, SWS@10% and IGST@18%. Accordingly, the differential duty arises due to re-classification of the said Bill of Entry in the correct CTH of imported goods worked out hereunder:

(Value in Rs.)

Bill of Entry No. and Date	Quantity (in kgs)	Ass. Value Declared in the BE	Duty under CTH 27101959	Duty Payable Declared	Duty Payable under CTH 27109900	Duty payable
5879075 dated 30.09.2024	321860	8673741/-	BCD@2.5% SWS@10% GST@18%	216843.5	BCD@5% SWS@10% GST@18%	433687/-

7.1 From the above it is clear that the importer had mis-classified the CTH and mis-declared the description of the imported goods to evade applicable duty on the same. The importer does not have any Authorization issued by the MOEF/GPCB/CPCB to deal with hazardous waste oil in any manner. Therefore, goods imported under above Bill of Entry No. 5879075 dated 30.09.2024 are liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importer has rendered themselves liable for penal action under Section 112 (a) of the Customs Act 1962.

7.2 The person Mr.Maddu Bhupathi, authorized by the importer for clearance of the present consignment, in his statement dated 14.11.2024 has clearly confessed that he prepared fake authorization letter dated 30.09.2024 on fake letterhead of the importer and authorize M/s. Rudra Shipping Services, Gandhidham for getting customs clearance of the imported cargo of his client / importer M/s. Khodiyar Marketing Private Limited, Mundra. Mr.MadduBhupathi has also confessed that he had edited / altered the CRCL Test Report and provided the same to the CB on whatsapp and message him to upload the same and give query reply in the EDI System. From the confessional statement given by Mr.MadduBhupathi, it is very clear that he was the KEY PERSON in this case, who knowingly & deliberately prepared forged documents, as discussed supra, to get custom clearance of the hazardous cargo illegally as import of hazardous nature cargo is prohibited. Therefore, Mr.MadduBhupathi rendered himself for penal action under Section 112 (a) and 114 AA of the Customs Act, 1962.

8. Relevant Legal Provisions Applicable in this Case:

Section 2(25) defined the terms "Import Goods":

"Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

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.]*

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

(a) –

–
–
–

(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;

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 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.

8.1 Hazardous waste oil is covered under Schedule-VI and govern under Rule-6 and Rule-12 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, issued by the Government of India in the Ministry of Environment, Forest and Climate Change.

Rule 6(1)Grant of authorization for managing hazardous and other wastes.- (1) Every occupier of the facility who is engaged in handling, generation, collection, storage, packaging, transportation, use, treatment, processing, recycling, recovery, pre-processing, co-processing, utilization, offering for sale, transfer or disposal of the hazardous and other wastes shall be required to make an application in Form 1 to the State Pollution Control Board and obtain authorization from the State Pollution Control Board within a period of sixty days from the date of publication of these rules.

Rule 12(1): No import of the hazardous and other wastes from any country to India for disposal shall be permitted.

Rule 12(2): The import of hazardous and other wastes from any country shall be permitted only for recycling, recovery, reuse and utilization including co-processing.

Rule 12(6): No import of the hazardous and other wastes specified in Schedule VI shall be permitted.

The Hazardous Waste Oil figures at Basel No. A4060 of the Schedule-VI, which is summarized:-

SCHEDULE VI

[See rules 12 (6), 12 (7) and 14(1)]

Hazardous and Other wastes prohibited for import

Basel No.	Description of hazardous and other wastes
(1)	(2)
A4060	Waste oils/water, hydrocarbons/water mixtures, emulsions

9.0 From the above, it is clear that the 321.86 MT cargo imported under Bill of Entry No. 5879075 dated 30.09.2024 was mis-declared as Fuel Oil, which is actually Hazardous

Waste Oil and import of hazardous nature cargo is prohibited. Thereby, it appears that the said imported cargo was deliberately mis-declared in the Bill of Entry as "Fuel Oil" and classified under CTH-27101951 to avoid the prohibitions. In light of the provisions of Section 46 of the Customs Act, 1962, the importer is under legal obligation to make accurate and truth declaration in the Bill of Entry but they failed to do so.

9.1 Mr. Maddu Bhupathi, who was authorised by the importer M/s. Khodiyan Marketing Pvt. Ltd., Mundra for clearance of the present consignment at Kandla Port, was well aware about the actual CRCL Test Report and thereby he intentionally / deliberately has prepared edited / altered CRCL Test Report and provided the same to the Customs Broker on whatsapp and message him to upload the same and give query reply in the EDI System. He also prepared fake authorization letter dated 30.09.2024 on fake letterhead of the importer to authorize M/s. Rudra Shipping Services, Gandhidham for getting customs clearance of the imported cargo of his client / importer. From the confessional statement given by Mr. Maddu Bhupathi, it is very clear that he was the KEY PERSON in this case, who knowingly & deliberately prepared forged documents, as discussed supra, to get custom clearance of the hazardous cargo illegally as import of hazardous nature cargo is prohibited. Therefore, Mr. Maddu Bhupathi rendered himself for penal action under Section 112 (a) and 114 AA of the Customs Act, 1962.

9.2 The Customs Broker M/s. Rudra Shipping Services, Gandhidham has failed to check the KYC of the importer provided by Mr. Maddu Bhupathi. They have also failed to ascertain the correctness of the Test Report uploaded on the system and thereby rendered themselves for penal action under Section 112 (a) of the Customs Act, 1962.

9.3 In view of the above, the Investigation report proposed the following-

M/s. Khodiyan Marketing Pvt. Ltd., Mundra at First Floor, Office No. 124-125, Flat No. 54/1, Sadguru Empire, Adani Port Road, Dhrub, Mundra, Kutch-370421 and Sh. Maddu Bhupathi residing at Plot No. 174, Duplax-1, Sector-7, Gandhidham may be called upon to show cause as to why:

- i. 321.86 MT cargo valued of **Rs.86,73,741/-**, imported under Bill of Entry No. 5879075 dated 30.09.2024 pertaining to the importer M/s. Khodiyan Marketing Pvt. Ltd., Mundra should not be held liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- ii. The differential duty amount of Rs. 2,81,463/- arising on account of mis classification of the goods, should not be recovered under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.
- iii. Penalty under Section 112(a) and/or 114A of the Customs Act, 1962 should not be imposed upon M/s. Khodiyan Marketing Pvt. Ltd
- iv. Penalty upon Sh. Maddu Bhupathi should not be imposed under Section 112 (a) and 114 AA of the Customs Act, 1962.
- v. Penalty upon M/s. Rudra Shipping Services, Gandhidham should not be imposed under Section 112 (a) of the Customs Act, 1962.

9.4 The brief facts of the Investigation report were communicated to all three noticees.

Waiver of Show cause notice

10. M/s. Khodiyar Marketing Pvt. Ltd and Sh Maddu Bhupathi vide their letters dated 11.12.2024 requested for waiver of SCN in the instant matter. However they both requested for personal hearing before deciding the case. Similarly, M/s. Rudra Shipping also requested for waiver of show cause notice and requested to be heard in person. Considering their request, I hereby allow the request of all the noticees for waiver of Show Cause notice in the matter.

SUBMISSION-

11. M/s. Khodiyar Marketing Pvt. Ltd vide letter dated 11.12.2024, interalia, submitted that they did not want any show cause notice in the matter and the matter may be decided on priority. Further they have relied upon the OIO dated 13.01.2020 issued by ADC, Mundra in the matter of M/s. Gujarat Enterprise, Bhavnagar.

12. Shri Maddu Bhupathi vide letter dated 11.12.2024, interalia, submitted that he did not want any show cause notice in the matter and further submitted that he had already tendered his statement during the investigation. He had nothing to add and requested to decide the matter on merit.

RECORD OF PERSONAL HEARING-

13. Opportunity of personal hearing was provided to M/s. Khodiyar Marketing Pvt. Ltd. and Shri Maddu Bhupathi on 13.12.2024 and 17.12.2024 respectively vide this office letter dated 11.12.2024.

14.1 Shri Gaurang Hareshbhai Sathwara, Director M/s. Khodiyar Marketing Pvt. Ltd. appeared for personal hearing on 13.12.2024. During the course of hearing, he submitted that he had imported goods under bona fide belief and faith on the importer. He further expressed his willingness to submit additionally in writing. He further requested to release the impugned goods.

Further, he requested that if the adjudicating authority takes a view that goods are Waste Oil (Hazardous) as proposed in the Investigation report, then the goods may be allowed to be released subject to the condition that goods are sold to waste re-cycler in terms of Rule-12 of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, issued by the Government of India in the Ministry of Environment, Forest and Climate Change.

14.2 In this regard, he has provided the following documents-

- (a) Sale Contract executed between M/s. Khodiyar Marketing Pvt. Ltd and M/s. Ashapura Petrochemicals Industries for the Purchase of 321.860MT imported through Bill of Entry No. 5879075 dated 30.09.2024.
- (b) Letter dated 16.12.2024 issued by M/s. Ashapura Petrochemicals Industries for the purchase of 321.680MT Waste Oil (Fuel Oil) from M/s. Khodiyar Marketing Pvt. Ltd.
- (c) Consent and Authorisation order issued by Gujarat Pollution control Board in favour of M/s. Ashapura Petro Chemicals Industries.
- (d) Pass Book for recycling of Hazardous waste & Other waste.

15. Shri Maddu Bhupathi appeared for personal hearing on 18.12.2024 and requested to decide the case on merit.

15.1 Shri Bharat J Gala, appeared on behalf of M/s. Rudra Shipping Services for personal hearing on 27.12.2024. He submitted that the allegations against him are baseless. He also submitted that he had followed all the legal requirements like KYC etc. In the processing of the impugned BoE. Any act of omission or misconduct was not at his end. Moreover, since his act was limited towards the role and activities of CHA only, the same needs to be acknowledged and proceedings under act relevant for smuggling etc. May not be invoked. He also wished that he did not require the SCN. He further prayed that said IR may be brought to an end about him as soon as possible and all the allegations against him may be dropped.

Discussion and findings:-

16. I find that the instant matter pertains to mis-declaration of goods in order to bypass the prohibition/restriction imposed on the said goods. I have carefully gone through the Investigation report, request letters for waiver of show cause notice and personal hearing and other relied upon documents supplied by the SIIB, Kandla.

17. In the instant case, the issues to be decided by me are:-

- (i) whether the Classification of the subject goods declared in the Bill of Entry, needs to be rejected and reclassified as per the Investigation report;
- (ii) whether the subject goods imported by M/s. Khodiyar Marketing Pvt. Ltd are liable for confiscation under section 111(m) of the Customs Act, 1962;
- (iii) Whether the importer is liable for payment of duty under Section 28(4) of the customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962.

- (iv) whether M/s. Khodiyar Marketing Pvt. Ltd is liable for Penalty under Section 112(a) and/or 114A of the Customs Act, 1962.
- (iv) whether Shri MadduBhupathi is liable for Penalty under Section 112(a) and 114AA of the Customs Act, 1962.
- (v) Whether M/s. Rudra Shipping services is liable for penal action under Section 112(a) of the Customs Act, 1962.

18. I find that M/s. Khodiyar Marketing Private Limited, the importer had filed B/E No. 5879075 dated 30.09.2024 for clearance of 321.86 MT Fuel Oil through the Customs Broker M/s. Rudra Shipping Services, Gandhidham.

19. I find that the faceless assessment officer had pushed the Bill of Entry to Port Assessment Group (PAG) (i.e. Custom House, Kandla) while mentioning the discrepancies between the test report uploaded by the Customs Broker and furnished by the CRCL, Vadodara.

20. The genuine Test report issued by CRCL, Vadodara is reproduced herein under:-

Lab. No. RCL/KANDLA/IMP/3829704.10.2024
 T.M. No. 1239124/03.10.2024
 B/E No. 5879075/30.09.2024

Report:
 The sample as received is in the form of blackish brown oily liquid.
 It is composed of mixture of hydrocarbon more than 70 % by wt. having following constants.
 Density at 15°C = 0.9587 g/cm³
 Flash point (PMCG) = 86.0°C
 Kinematics Viscosity at 50°C = 234 cSt
 Ash content = 0.175% by wt.
 Water content = Nil
 Sediment = 0.36% by wt.
 Acidity (inorganic) = Nil
 Gross Calorific value (GCV) = 10291 cal/gm
 Sulphur Content % = 1.646
 PCBs, mg/Kg = 1.87
 PAHs, Percentage = 0.007
 Lead Content, PPM = 0.02
 Arsenic content, PPM = ND
 Cadmium + Chromium + Nickel, PPM = 40.04
 Above tested parameters sample w/r does not meet the requirement of fuel oil IS 1593:2016, in respect of ash Content and sediment.

It is off specification fuel oil/waste oil. The sample was further tested as per Circular 30/2001-Cus dt 04th June 2001. It is hazardous waste.

Sealed remnant sample returned.

M.
 10-10-2024
 Chemical Examiner Gr. II
 Central Excise & Customs Laboratory,
 Vadodara
 14/11/2024

*S. S. M. B. Bhupathi
 14/11/2024*

Khodiyar Marketing Pvt. Ltd.
 S. S. M. B. Bhupathi
 Director

20.1 Clearly, the above mentioned Test report dated 18.10.2024 issued by Chemical Examiner Gr.II, CRCL Vadodara, on the basis of certain parameters, opined that the imported goods did not meet the requirement of fuel Oil IS: 1593:2018 in respect of ash content and sediment. The Test report clearly stated that the sample of goods tested was off specification fuel oil/waste oil and the same was hazardous in nature.

21. Further, the altered test report as uploaded by Custom Broker on the EDI is reproduced as below:-

Lab. No: RCL/KANDLA/IMP/3829/04.10.2024
T.M. No: 1239124/03.10.2024
B/E No: 5879075/30.09.2024

Report:
The sample as received is in the form of blackish brown oily liquid.
It is composed of mixture of hydrocarbon more than 70 % by wt. having following constants.
Density at 15°C = 0.9587 gm/cm³
Flash point (PMCC) = 55.0°C
Kinematics Viscosity at 50°C = 234 cSt
Ash content = 0.07% by wt.
Water content = Nil
Sediment = 0.38% by wt.
Acidity (inorganic) = Nil
Gross Calorific value (GCV) = 10291 cal/gm
Sulphur Content % = 1.646
PCBs, mg/Kg = 1.87
PAHs, Percentage = 0.007
Lead Content, PPM = 0.82
Arsenic content, PPM = ND
Cadmium + Chromium + Nickel, PPM = 49.04
Above tested parameters sample did not meet the requirement of fuel oil IS: 1593:2018.

Sealed remnant sample returned.

18-10-2024
M. Bhimpuri
14/11/2024

Chemical Examiner Gr. II
Central Excise & Customs Laboratory,
Vadodara
TIN: 253000000001
Chemical Examiner Cell

Signature Not Verified
Digitally signed by BHARAT JETHALAL GALA
Date: 2024.10.19 14:00:04 IST
Reason: Secure Document
Location: India

Sept 18/10/2024
Khodiyar Marketing Pvt. Ltd.
Signature
Director



21.1 On perusal of the altered Test Report, I find that the test report has been carefully altered to change the ash content from 0.17% to 0.07% by weight in order to hide the correct nature of the goods. Further, the remark of Chemical Examiner has been altered to hide the hazardous nature of goods.

Whether the imported goods are hazardous in nature-

22. I find that the Test report dated 18.10.2024 states that the imported goods don't meet the requirement of Fuel Oil IS: 1593:2018 in respect of ash content and sediment. Accordingly, the test report has considered the goods as off specification fuel oil/ waste oil. Further the Test report relied on parameters like PCBs, PAHs, Lead Content, Arsenic content, Cadmium + Chromium + Nickel to conclude that the imported goods are hazardous in nature in terms of Circular No. 33/2001-Cus dated 04.06.2001. The said Circular clearly states that Samples confirming to heavy metal concentration listed in Appendix 1 could be re-refined. Those not meeting the specifications laid down for heavy metals should be classified as *hazardous waste*. Therefore, it can be said that those goods meeting the specification given in Appendix-1 of the said circular are to be considered as Used/Waste oil fit for re-refining. In this regard, I also find that permissible limits as provide in the above mentioned Circular are also provided in Part B of Schedule V of Hazardous and other wastes (Management and Trans-boundary Movement) Rules- 2016. The parameters given in said schedule and Circular are compared with the Test report as given below:-

S.No	Parameter	Maximum permissible limit as per Schedule V of Hazardous and Other waste Rules, 2016	Maximum permissible limit as per Appendix -1 as given in Circular No. 33/2001	As per Vadodara report w.r.t BoE dated 5879075 30.09.2024
1.	Lead	100 ppm	100ppm	0.82 ppm
2.	Arsenic	5 ppm	5ppm	ND
3.	PCBs	<2ppm	Absent	1.87 mg/kg or 1.87ppm
4.	PAHs	6%	6%	0.007%
5.	Cadmium+Chromium+Nickel	500ppm	500ppm	49.04PPM
6.	Flash Point	-	Min. 94 Deg Centrigade	86 Deg Centigrade
7.	Density	-	0.85 to 0.95%	0.9587 gm/cm3

22.1 On perusal of the above parameters, I find that parameters obtained in Test report are within the permissible limit as provided in Circular and Schedule V. Both the Circular and Schedule V allows waste/Used oil, meeting the above specifications, fit for re-refining. In view of the above findings, I find that the imported goods don't fall under the category of prohibited goods as provided in Schedule VI of Hazardous and Other waste Rules, 2016 read with Rule 12(6) of the said Rules as proposed in the Investigation Report and the imported goods are correctly classifiable as Waste Oil-Other under CTH 27109900 and the same is fit for re-refining.

22.2 I further find that the waste oil falling under the CTH 27109900 is restricted in nature and the same is governed by Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The importer doesn't have the requisite authorization by Gujarat Pollution Control Board (GPCB) to deal with waste Oil.

22.3 I find that the importer, vide letter dated 20.08.2024 had given the authorisation to M/s. Shree Asha Material Handling to get the cargo cleared from Customs. Shri Maddu Bhupathi (operating M/s. Shree Asha Material Handling) forged a letter dated 30.09.2024 whereby the importer appeared to authorise M/s. Rudra Shipping, Custom Broker for custom clearance. ShriMadduBhupathi engaged M/s. Rudra Shipping for customs clearance. Further, the Test report received by ShriMadduBhupathi was carefully altered by him in order to hide the hazardous nature of goods.

23. I find that Shri Maddu Bhupati in his statement recorded under Section 108 of the Customs Act, 1962 has admitted that letter dated 30.09.2024 authorising M/s. Rudra Shipping was not issued by M/s. Khodiyar Marketing pvt. Ltd. and the same was prepared by him by editing in computer. He further categorically admitted that he edited/alterred CRCL Test Report and forward the same to M/s. Rudra Shipping Services from his mobile No. 9879635950 and messaged to upload the same to get clearance of the Bill of Entry from assessment. He further deposed that M/s. Rudra Shipping Services, Gandhidham was not aware about tempering in the said Test Report, they only uploaded the copy, which was sent by him on whatsapp. The instant case of mis-classification and mis-declaration has been orchestrated by ShriMadduBhupathi. He had submitted that he had no extra benefit but to show his performance and to keep their business continued with him.

24. In view of the above discussion and findings of the Test report and submission in the statement, I find that the importer has mis-classified and mis-declared the goods to evade

applicable duty on the same. The importer does not have any Authorization issued by the MOEF/GPCB/CPCB to deal with waste oil in any manner.

25. I find that the goods were declared by the importer as "Fuel Oil" (CTH-27101959) which attracted BCD @2.5%, SWS@10% and IGST @18%. However, the goods imported by the importer vide above bill of entry are "Waste Oil (Others)", which is correctly classifiable under CTH 27109900 (others) which attracts BCD@5%, SWS@10% and IGST@18%. Therefore, the differential duty of the said Bill of Entry in the correct CTH of imported goods is as under:-

(Value in Rs.)			
As per declaration		As per correct CTH	
Assessable Value	8673741	8673741	Assessable Value
BCD@2.5%	216843.5	433687.1	BCD@5%
SWS@10%	21684.4	43368.7	SWS@10%
Total Value for GST	8912269	9150796.8	Total Value for GST
IGST@18%	1604208	1647143	IGST@18%
Total duty	1842736.3	2124199.2	Total duty
Duty evasion		281462.9	

In view of the above, I hold that M/s. Khodiyar Marketing Pvt. Ltd is liable for payment of duty amounting to Rs. 21,24,199.2/- . The differential duty, sought to be evaded, is Rs.2,81,462/-.

RELEASE OF GOODS:-

26. I find that the goods are Waste/Used Oil (other wastes) in nature and are not allowed to be imported as per the provisions of Rule 12(1) of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, issued by the Government of India in the Ministry of Environment, Forest and Climate Change, reproduced below:-

*Rule 12(1): No import of the hazardous and **other wastes** from any country to India for disposal shall be permitted.*

27. However, as per Rule 12(2) of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, issued by the Government of India in the Ministry of Environment, Forest and Climate Change, reproduced below, the import of hazardous and other wastes is permitted only for re-cycling, recovery, reuse and utilization including co-processing:-

Rule 12(2): The import of hazardous and other wastes from any country shall be permitted only for recycling, recovery, reuse and utilization including co-processing.

28. It is clear that the imported goods are waste in nature and the same is permitted only for recycling, recovery, reuse and utilization including co-processing. In this regard, I find that the importer during the course of hearing made a request to allow clearance of goods subject to the condition that the goods shall be sold to M/s. Ashapura Petrochemicals Industries, Plot No. 1&2, Survey No. 356, Somaiya Industrial Park, Mota Asambiya, Mandavi, Kutch holding order and consent authorisation from GPCB for the purpose of re-process or recycling.

29. Considering his request, I find that the importer has provided the following documents:-

- (a) Sale Contract executed between M/s. Khodiyar Marketing Pvt. Ltd and M/s. Ashapura Petrochemicals Industries for the Purchase of 321.860MT imported through Bill of Entry No. 5879075 dated 30.09.2024.
- (b) Letter dated 16.12.2024 issued by M/s. Ashapura Petrochemicals Industries for the purchase of 321.680MT Waste Oil (Fuel Oil) from M/s. Khodiyar Marketing Pvt. Ltd.
- (c) Consent and Authorisation order issued by Gujarat Pollution control Board in favour of M/s. Ashapura Petro Chemicals Industries.
- (d) Pass Book for recycling of Hazardous waste & Other waste.

30. On perusal of the sale contract executed between M/s. Khodiyar Marketing Pvt. Ltd and M/s. Ashapura Petrochemicals Industries for the Purchase of 321.860MT imported through Bill of Entry No. 5879075 dated 30.09.2024, I find that the sale contract categorically mentions that the goods shall be sold only for re-process and industrial use not for sales.

31. On perusal of the Letter dated 16.12.2024 issued by M/s. Ashapura Petrochemicals Industries, I find that M/s. Ashapura Petrochemicals Industries has agreed to purchase 321.680MT Waste Oil (Fuel Oil) from M/s. Khodiyar Marketing Pvt. Ltd.

32. On perusal of Consent and Authorisation order issued by Gujarat Pollution control Board in favour of M/s. Ashapura Petro Chemicals Industries, I find that M/s. Ashapura Petro Chemicals Industries is authorised to operate industrial plant for manufacture of Re-cycled waste oil and Re-refined Transformer Oil. As per Para 5.3 of the said Order, it is apparent that they are authorized to operate a facility for collection, storage within factory premises, transportation and ultimate disposal of waste Oil.

33. In view of the above, I hold that the goods shall be released to the importer only for the purpose of sale of goods to M/s. Ashapura Petro Chemicals Industries having the required authorization and facility to deal with Waste Oil.

Confiscation of goods and penalties thereof:-

34. I find that the Shri Maddu Bhupathi has mis-classified and mis-declared the goods imported vide Bill of Entry no. 5879075 dated 30.09.2024, as discussed in the foregoing paras. This act on his part has rendered the goods liable to be confiscated under the provisions of Section 111(m) of the Customs Act, 1962, which is reproduced herein below:-

"Section 111(m) in the Customs Act, 1962

(m) 1[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 2[in respect thereof or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54];"

In this regard, I also rely on the judgement of CC Mumbai VsMultimetal Ltd-2002(Tri-Mumbai), upheld in Apex court in 2003 (ELT A309 (SC), wherein it is held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not. In view of the above, I hold that the goods valued at Rs. 86,73,741/- are liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

Penalties on the importer M/s. Khodiyar Marketing Pvt. Ltd, Shri Maddu Bhupathi and M/s. Rudra Shipping services under Section 112, 114A and 114AA of the Customs Act, 1962.

35. With regard to the penalties under Section 114A and/or 112 of the Customs Act, 1962, I find that both the sections 112 and 114A attract penalties for evasion of duty.

35.1 It is pertinent to note that Section 112(a) (ii) mandates that in case of dutiable goods the importer is liable to **penalty not exceeding ten percent of the duty sought to be evaded** or five thousand rupees, whichever is higher. In the instant case, the duty sought to be evaded is Rs. 281463/-, as discussed earlier. Therefore, both the importer as well as Shri Maddu Bhupathi have rendered themselves liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

35.2 I further find that Section 114A also attracts penalty for non/short payment of duty by way of collusion/willful mis-statement/fraud. It is pertinent to note that the penalty under Section 114A of the customs Act, 1962 is attracted from **person chargeable to duty** and instant case, the importer is the person who is chargeable to duty. However, offence in the instant case has been carried out by Shri Maddu Bhupathi who has altered the test report and engaged in preparing the fake authorisation letter. Shri Maddu Bhupathi has admitted in his statement that the importer was not aware of the same. In view of the same, I hold that penalty under Section 114A is not attracted.

35.3 With regard to penalty under Section 114AA of the Customs Act, 1962, I find that Shri Maddu Bhupathi has made a false statement and document while presenting the Bill of Entry by mis-declaring the goods, rendering himself liable for penalty under Section 114AA of the Customs Act, 1962.

35.4 With regard to penalty under Section 112(a) of the Customs Act, 1962 upon M/s. Rudra Shipping services, I find that penalty under section 112(a) of the Customs Act, 1962 is attracted only when there is active involvement of the person on whom the penalty is proposed as the provisions of Section 112(a) clearly contain words "knowingly and intentionally" however as per the investigation report it is clear that M/s. Rudra Shipping services were not aware of the alteration or modification of the Test report carried out by Sh. Maddu Bhupathi. Further the KYC documents of the importer were forged by Sh. Maddu Bhupati and Sh. Maddu Bhupathi in his statement admitted that M/s. Rudra Shipping services were not aware of the same. In view of the same, I hold that penalty under Section 112(a) is not attracted.

36. In view of the same, I hereby pass the following order:-

- (i) I reject the classification of the goods imported vide Bill of Entry No. 5879075 dated 30.09.2024 wherein the goods have been declared as fuel oil under CTH 27101951 and order to re-classify the same as Waste Oil-Others under CTH 27109900.
- (ii) I determine and confirm the demand of differential duty amounting to Rs. 2,81,463/- and order to recover the same under Section 28(4) of the Customs Act, 1962.
- (iii) I order to confiscate the above mentioned goods i.e. 321.86 MT cargo valued at Rs. 86,73,741/-, imported under Bill of Entry No. 5879075 dated 30.09.2024 pertaining to the importer M/s. Khodiyar Marketing Pvt. Ltd., Mundra under Section 111 (m) of the Customs Act, 1962.

Considering their request I allow redemption of goods under Section 125(1) of the Customs Act, 1962 on payment of fine of Rs. 8,67,374/- (Rs Eight Lakhs Sixty Seven Thousand Three Hundred and Seventy Four Only) in lieu of confiscation subject

to the condition that the goods shall be sold to M/s. Ashapura Petrochemical Industries Ltd.

(iv) I order to recover interest on the amount of duty confirmed at (ii) above under Section 28AA of the Customs Act, 1962.

(vi) I impose penalty of Rs. 28,000/- (Rupees Twenty Eight Thousand only) under Section 112(a) upon M/s. Khodiyar Marketing Pvt. Ltd.

(vii) I impose penalty of Rs. 28,000/- (Rupees Twenty Eight Thousand only) under Section 112(a) upon Shri Maddu Bhupathi.

(viii) I impose penalty of Rs. 86,73,741/- (Rupees Eighty Six Lakhs Seventy Three Thousand Seven Hundred and Forty One only) under Section 114AA upon Shri Maddu Bhupathi.

(ix) I don't impose penalty under Section 112(a) upon M/s. Rudra Shipping services.

37. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

Vishwajeet Singh
28.12.2024
(Vishwajeet Singh)

Additional Commissioner

F.No. GEN/ADJ/ADC/2699/2024-Adjn

DIN- 20241271ML0000313113

To,

- (i) M/s. Khodiyar Marketing Private Limited having address at First Floor, Office No. 124-125, Flat No. 54/1, Sadguru Empire, Adani Port Road, Dhrub, Mundra, Kutch-370421
- (ii) Shri Maddu Bhupathi, Plot No. 174, Duplax-1, Sector-7, Gandhidham.
- (iii) M/s. Rudra Shipping services, Goyal Commercial Centre, Plot No. 259, Ward No. 12-B, Second Floor, Gandhidham-370201.

1. The Deputy Commissioner (SIIB), Customs House, Kandla for information and necessary action please.
2. The Superintendent (Review/EDI) for necessary action.
3. Guard File.