



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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A	File No.	CUS/APR/MISC/6401/2024-Gr 2-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/126/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	19.08.2024
E	Noticee/Party/ Importer/ Exporter	M/s P K Marketing Company, at Shed no.3-A and 3-B, Dist-Kutch, Gujarat-370201
F	DIN No.	20240871MO000011161B

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

OIO No. - MCH/ADC/AK/126/2024-25

Brief Fact

M/s. P K Marketing Company (IEC-0504042971) situated at Shed no.3-A and 3-B, Dist-Kutch, Gujarat-370201 (herein after referred as the importer for the sake of brevity), filed Bill of Entry No. 4259256 dated 29.06.2024 through Customs Broker M/s. Bright Shiptrans PVT Ltd. (herein referred as "Custom Broker") for the clearance of 75776 KGS of "Coated Board (White Board)". The declared unit price is US \$.47 per KGS and the declared assessable value is Rs. 30,02,321/-. The said goods are classified under tariff heading 48109900 of the first schedule of the Customs Tariff Act, 1975. The said goods are supplied by M/s. Earth Trading USA Corp, USA under invoice No. ETU010/2024 dated 27.05.2024. The same were loaded in three containers no. TGBU8595066, CSNU7353015 and CSNU7940060, from Norfolk Port in USA under Bill of Lading No. OOLU2736116680 dated 27.05.2024.

2. The subject Bill of Entry has been facilitated with RMS, where examination and assessment has not been prescribed, however, one container No. CSNU7940060 was found having Seal Mismatch. The Goods stuffed in above said container were examined by Docks officer on 12.07.2024 and it was revealed that goods were packed in roles having different size and appeared to be Stock Lot. (There were total 29 packages of cargo/ coated Board/ Roles, in which 27 are coated roles and 2 pallets are of coated board sheet). Therefore, the said Bill of Entry has been forwarded to import assessment group for further action.

3. The Bill of Entry has been assessed on 29.06.2024 under RMS and Out of Charge has been granted on 03.07.2024. The importer has taken delivery for 02 containers no. TGBU8595066, CSNU7353015 on 08.07.2024. Further, when it is noticed that one container was found having seal mismatch, OOC was cancelled and examination of the goods stuffed in container No. CSNU7940060 was carried out on 12.07.2024. On examination, the goods were found to be stocklot and therefore appeared misdeclared.

4. Since the total assessable value for the imported goods, i.e., Coated Board (White Board), with a net weight of 75,776 KGS, was ₹30,02,321/-, stuffed in three containers, the assessable value of the goods stuffed in one container, Container No. CSNU7940060, having a net weight of 24,040

KGS, may be calculated as follows:-

Table-A

Sr. No.	Bill of Entry No.	Description of the goods	Container No.	Weight (KGS)	Price (Per Kgs)	Assessable value (Rs)	Duty
1.	4259256 dated. 29.06.2024	Coated Board (White Board)	CSNU7940060	24040	39.621	9,52,489/-	2,31,645/-

5. Whereas, DGFT vide notification No. 45/2015-2020 dated 31.01.2020, has introduced policy condition for goods covered under EXIM Code 4810. Vide the said notification, import of stock lot of coated paper covered under various tariff items including tariff item 48109900 has been prohibited.

5.1 The relevant part of the notification No. 45/2015-2020 dated 31.01.2020 issued by the DGFT is as follow:-

Subject: Incorporating Policy Condition under HSN Code 4810 of Chapter 48 of Schedule Policy I (Import Policy), ITC(HS), 2017.

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby introduces a Policy Condition for items under EXIM Code 4810 of Chapter 48 of ITC (HS), 2017, Schedule - I (Import Policy).

Exim Code	Item Description	Import Policy	Policy Condition
48101310	Imitation art paper	free	Import of Stock Lot is Prohibited
48101320	Art paper	free	Import of Stock Lot is Prohibited
4810.....	free	Import of Stock Lot is Prohibited
48109900	Other	free	Import of Stock Lot is Prohibited

Effect of the Notification: Import policy of Stock Lot under HSN Code 4810 of Chapter 48 of ITC (HS), 2017 is revised from 'Free' to is 'Prohibited'.

6. Further, DGFT has issued Trade Notice No.8/2020-2021 dated 4

May 2020 regarding Clarification with regard to description of 'Stock Lot' used in the Notification No.45/2015-2020 dated 31st January, 2020.

6.1. The relevant portion of the Trade Notice No.8/2020-2021 dated 04.05.2020 issued by the DGFT is as follow:-

Vide Notification No.45/2015-2020 dated 31st January 2020, import of Stock Lot under HSN Code 4810 of Chapter 48 of ITC (HS), Schedule - I (Import Policy) was 'Prohibited'.

- a . Import of different kinds of paper description under all the 22 tariff lines covered under ITC (HS) 4810 is 'Free'.*
- b. Importers should mention correct description of paper being imported at 8 digit under ITC (HS) 4810. They are expected to clearly specify quantities of paper under each 8 digit ITC (HS) Code separately.*
- c. If the whole imported paper consignment is without description for each category of paper it is a Stock lot.*
- d . The Customs would check before allowing consignment where the description of imported paper matches with any/some of the 8 digit entries under ITC (HS) 4810. The Customs would not allow consignment where paper of different description are intended to be imported and are bundled together under ITC (HS) 4810 as a Stock Lot.*
- e. In case paper proposed to be imported is not covered in any of the existing 8 digit ITC (HS) codes under ITC(HS) 4810, Trade is advised to request Department of Revenue for the creation of a new tariff line with proper justification.*

7. As per the clarification on "Stocklot", issued by DGFT vide Trade Notice No.8/2020-2021 dated 04 May 2020, Import of different kinds of paper description under all the 22 tariff lines covered under ITC (HS) 4810 is 'Free' subject to the correct description of paper being imported at 8 digit under ITC (HS) 4810 mentioned by importer in the Bill of entry. Importers are expected to clearly specify quantities of paper under each 8 digit ITC (HS) Code separately. If the whole imported paper consignment is without description for each category of paper, it is a Stock lot.

8. In the instant case, for all the goods stuffed in subject 03 containers, the Importer has filed the Bill of Entry 4259256 dated 29.06.2022 declaring their goods under single description as "Coated Board (White Board)" under CTH 48109900. The importer has not declared in any of the import documents that the goods stuffed in container No. CSNU7940060

are different from the goods for which they have taken delivery as per RMS assessment. Therefore, it appears that in the impugned consignment covered under subject Bill of Entry the importer has imported 'Stocklot of Coated Board (White Board)', thereby misdeclaring their goods as Coated Board (White Board), to import prohibited goods i.e. "Stocklot of Coated Board (White Board)" in violation of DGFT notification No. 45/2015-2020 dated 31.01.2020 to import of stock lot of coated paper.

9. In the context of this case, the following legal provisions are reproduced for reference.

Section 46: *Entry of goods on importation.* – "(1) The importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(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."

Section 111(d): *any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

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,

PERSONAL HEARING AND WRITTEN SUBMISSION

10. The importer vide letter dated 22.07.2024 has stated that Import product is prohibited due to impact of Stocklot material. In domestic market, imported goods is not harmful/dangerous/poisonous in nature for any living or non living element. Hence requested for clearance of goods upon payment of Fine and penalty. However, importer vide this letter requested that they do not want show cause notice and personal hearing.

DISCUSSION AND FINDINGS

11. I have carefully gone through facts of the case as well as available records. The importer vide letter dated 22.07.2024, claimed that the imported product is classified as "Prohibited" due to its impact as a "Stocklot". Importer claimed that the goods are not harmful, dangerous, or poisonous to any living or non-living element, and requested permission for clearance of goods upon payment of the appropriate fine and penalty.

12. It needs to be decided whether imported goods are liable for confiscation in view of misdeclaration and whether importer is liable for penalty under relevant sections of the Customs Act, 1962.

13. I find that importer vide their letter dated 22.07.2024 requested to waive the SCN and personal hearing in this matter. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records.

14. I find that M/s. P K Marketing Company filed Bill of Entry No. 4259256 dated 29.06.2024 through Customs Broker M/s. Bright Shiptrans PVT Ltd. for the clearance of 75776 KGS of " Coated Board (White Board)". The declared unit price is US \$.47 per KGS and the declared assessable value is Rs. 30,02,321/- for the goods stuffed in three containers. The said goods are classified under tariff heading 48109900 of the first schedule of the Customs Tariff Act, 1975. The said goods are supplied by M/s. Earth Trading USA Corp, USA under invoice No. ETU010/2024 dated 27.05.2024. The same were loaded in three containers no. TGBU8595066, CSNU7353015 and CSNU7940060, from Norfolk Port in USA under Bill of Lading No. OOLU2736116680 dated

27.05.2024.

15. I find that the subject Bill of Entry has been facilitated with RMS, where examination and assessment has not been prescribed, however, one container No. CSNU7940060 was found having Seal Mismatch. The Goods stuffed in above said container were examined by Docks officer on 12.07.2024 and it was revealed that goods were packed in roles having different size and appears to be Stock Lot. (There were total 29 packages of cargo/ coated Board/ Roles, in which 27 are coated roles and 2 pallets are of coated board sheet). Therefore, the said Bill of Entry has been forwarded to import assessment group for further action..

16. It is noticed that the Bill of Entry has been assessed on 29.06.2024 under RMS and Out of Charge has been granted on 03.07.2024. The importer has taken delivery for 02 containers no. TGBU8595066, CSNU7353015 on 08.07.2024. Further, when it is noticed that one container was found having seal mismatch, OOC was cancelled and examination of the goods stuffed in container No. CSNU7940060 was carried out on 12.07.2024. On examination, the goods were found to be stocklot and therefore appeared misdeclared.

17. I find that since, the total assessable value for the imported goods, i.e., Coated Board (White Board), with a net weight of 75,776 KGS, was ₹30,02,321/, stuffed in three containers, the assessable value of the goods stuffed in one container, Container No. CSNU7940060, having a net weight of 24,040 KGS, and applicable duty is calculated as given in the table under para 4.

18. I find that DGFT Vide Notification No. 45/2015-2020 dated 31.01.2020, introduced policy condition for goods covered under EXIM Code 4810. Vide the said notification, import of stock lot covered under various tariff items including tariff item 48109900 has been prohibited. As per the clarification on "Stocklot", issued by DGFT vide Trade Notice No.8/2020-2021 dated 4 May 2020, Import of different kinds of paper description under all the 22 tariff lines covered under ITC (HS) 4810 is 'Free' subject to the correct description of paper being imported at 8 digit under ITC (HS) 4810 should be mentioned by importer in the Bill of entry. Importer is expected to clearly specify quantities of paper under each 8 digit ITC (HS) Code separately. If the whole imported paper consignment is

without description for each category of paper it is a Stock lot.

19. I find that in the instant case, for all the goods stuffed in subject 03 containers, the Importer has filed the Bill of Entry 4259256 dated 29.06.2022 declaring their goods under single description as "Coated Board (White Board)" under CTH 48109900. The importer has not declared in any of the import documents that the goods stuffed in container No. CSNU7940060 are different from the goods for which they have taken delivery as per RMS assessment. Therefore, it appears that in the impugned consignment covered under subject Bill of Entry the importer has imported 'Stocklot of Coated Board (White Board)'. Thus, the importer mis-declared their goods as Coated Board (White Board), to import prohibited goods i.e. "Stocklot of Coated Board (White Board)" as per DGFT notification No. 45/2015-2020 dated 31.01.2020, import of stock lot of coated paper covered under various tariff items including tariff item 48109900 is prohibited.

20. From the forgoing facts and legal position, I find that Importer M/s. P K Marketing Company has mis declared the goods by declaring it 'Coated Board (White Board)' instead of "Stocklot" and as per DGFT notification No. 45/2015-2020 dated 31.01.2020, import of stock lot of coated paper covered under various tariff items including tariff item 48109900 has been prohibited. Being prohibited goods, the same appeared liable for confiscation under Section 111(d) of the Customs Act, 1962 and the importer appeared liable to penalty under Section 112(a)(i) *ibid*.

21. I find that importer has filed Bill of Entry No. for item coated Board having weight of 75776 KGS contained in three containers. It is a fact that one of the containers i.e. CSNU7940060 on being examined had mis-declared cargo. I find that BE was facilitated having no assessment and no examination but due to seal mismatch one container No. i.e. CSNU7940060 was examined resulting into unearthing of mis-declaration of cargo. This has resulted into the fact that importer has tried to import prohibited cargo i.e. Stocklot of Coated Board. Thus I hold that imported goods is prohibited and liable for confiscation under section 111(d) of the customs Act, 1962.

22. As the impugned goods are found to be liable for confiscation under Section 111(d) of the Customs Act, 1962 for being prohibited, I find it necessary to consider as to whether redemption fine under Section 125 of

Customs Act, 1962, is liable to be imposed in lieu of confiscation or otherwise.

The Section 125 ibid reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised 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.”

Thus, I find that in view of provisions above, the adjudicating authority has to apply discretion in respect of redemption of such goods which are prohibited in nature. As I have held the goods to be prohibited, I find no reason to allow clearance of the said cargo on payment of redemption fine for home consumption. Therefore, only option available is absolute confiscation of the goods found in the container no. CSNU7940060 only as goods of other two containers were already gated out, which I hold accordingly.

23. I find that importer have committed a breach of the law by importing prohibited cargo by way of misdeclaration and for the said act they need to be visited with penalty which I hold accordingly under section 112(a)(i) of the Customs Act 1962.

24. In view of forgoing discussion and findings, I pass the following order:-

ORDER

- i. I order for absolute confiscation 24040 KGS of goods, i.e., 'Coated Board (White Board)' having an assessable value of Rs. 9,52,489/- stuffed in CSNU7940060), filed by importer M/s. P K Marketing Company vide Bill of Entry No. 4259256 dated 29.06.2024.
- ii. I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s. P K Marketing Company (IEC-0504042971) situated at Shed no.3-A and 3-B, Dist-Kutch, Gujarat-370201 under Section 112 (a)(i) of the Customs Act, 1962 for the acts and omission on their parts, as discussed above.
- iii. The confiscated goods shall be disposed of in accordance with the

provisions outlined in the Disposal Manual, 2019.

25. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Signed by

Arun Kumar

Date: 19-08-2024 19:07:32
(Arun Kumar)

Additional Commissioner
Import assessment,
Customs House, Mundra

To,

1. M/s. P K Marketing Company,
at Shed no.3-A and 3-B, Dist-Kutch, Gujarat-370201.

Copy to:

1. The Dy. Commissioner of Customs, RRA, Mundra Customs.
2. The Dy. Commissioner of Customs, TRC, Mundra Customs.
3. Office Copy.