

		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	 सत्यमेव जयते
A	File No.	CUS/APR/BE/SAO/90/2025-Gr 1	
B	OIO No.	MCH/ADC/ZDC/221/2025-26	
C	Passed by	Dipak Zala Additional Commissioner, (Import Assessment), Custom House Mundra.	
D	Date of order	30.08.2025	
E	Date of Issue	30.08.2025	
F	SCN No. & Date	Importer requested for waiver in PH & SCN	
G	Noticee / Party / Importer	M/s. Smvirani Industries Pvt. Ltd. Office No. 222, 2nd Foor, Shiva Blessing-2 Opp. BMC Office, Bhavnagar – 364001	
H	DIN	20250871MO000061666C	

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.
The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road Ahmedabad-380009
3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.

7. 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 or Penalty are in dispute, where penalty alone is in dispute.

Brief Facts of the Case

M/s. Smvirani Industries Pvt. Ltd., Office No. 222, 2nd Floor, Shiva Blessing-2, Opp BMC Office, Bhavnagar - 364001 filed Bill of Entry No. 3093729 dated 05.07.2025 through their CHA M/s. Gaurav M. Jhaveri for import of "Fuel Oil" (CTH-27101951).

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

					(Amount in Rs.)
Bill of Entry No. & Date	Description of goods	Qty. in Kgs	Ass. Value declared	Duty Payable declared	
3093729 dated 05.07.2025	Fuel Oil [27101951]	2,06,722.5	31,51,409/-	6,69,517/-	

2.1. The said Bill of Entry was FAG facilitated and as per examination order, examination of goods was carried out by docks examination officers on 26.08.2025 in the presence of authorized representative of CHA and authorized representative of CFS and representative samples were drawn from the consignment to send to CRCL, Kandla for testing purpose under TM No. 1290650 date 30.07.2025. The goods/cargo of the said bill of entry was stuffed in 06*20 feet Containers.

2.2. The Chemical Examiner Grade-II, CRCL, Kandla vide Test Report Lab No. RCL/Mundra/IMP/2809 dated 08.08.2025 submitted his report stating that-

"The sample as received is in the form of Grayish Black Oily Liquid, it is composed of hydrocarbons more than 70% by wt. having following constants:

Density at 15°C (gm/ml) = 0.8599 gm/cm³

Flash point (PMCC)°C = 94.8

Kinematics Viscosity at 50°C (Cst) = 25.488

Ash content (% by wt.) = 0.41

Water content = NIL

Sediment (% by wt.) = 0.53

Acidity (inorganic) = NIL

Gross Calorific value (cal/gm) = 10816

Sulphur Content %= 0.237

PCBs, mg / Kg = Below detection limit (LOQ 0.2)

PAHs, Percentage = 0.00002

Lead Content, PPM = 10.45

Arsenic Content, PPM = 0.83

Cadmium + Chromium + Nickel, PPM = 88.48

Above tested parameters sample u/r does not meet the requirement of fuel oil IS:1593:2018, in respect of Ash content & Sediment Content.

It is off specification fuel oil/waste oil. The sample was further tested as per Circular 33/2001-Cus dt. 04th June 2001. It is non-hazardous waste. Sealed remnant sample returned”

2.3. From the above reports, it appears that the imported cargo has been described as "Fuel Oil" classifiable under Customs Tariff Item 27101951 ITC (HS), however on testing; it is revealed that the samples of the imported goods are waste oil.

In view of the above, the said goods are classifiable under CTH 27109900 and are restricted as per the Foreign Trade Policy. The relevant portion of the ITC (HS), 2017 Schedule 1- Import Policy is reproduced as follows:

HS Code	Item Description Policy Policy	Policy	Policy condition
	Condition Waste Oil		
27109100	Containing polychlorinated biphenuls (PCBs) polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)	Restricted	Imports subject to Policy Condition (3) below Para 2.20 of Foreign Trade Policy and condition at Policy Condition (2) below
27109900	Others	Restricted	

The import of the waste oil is governed by the Hazardous and Other Waste (Management, handling and Tran's boundary Movement) Rules, 2016.

As per definition given a Rule 3(39) in part I of Notification dated 04.04.2016 issued by the Ministry of Environment, Forest and Climate Change notified as "The Hazardous and other waste (management and Transboundary) Rules 2016 'waste oil' means any oil which includes spills of crude oil, emulsions, tank bottom sludge and slop oil generated from petroleum refiners, installations or ships and can be used as fuel in furnaces for energy recovery, if it meets the specifications laid down in Part-B of Scheduled V either as such or after reprocessing.

Waste oil is covered under Schedule IV under Rule 6(i) (ii) and 6(2) of Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 issued by the Ministry of Environment, Forest and Climate Change. The waste oil figures at Sr. No. 20 of the Schedule IV of the listed recyclable hazardous wastes which is reproduced below:-

SCHEDULE IV

[See rules 6 (1) (ii) and 6 (2)]

List of commonly recyclable hazardous wastes

Sl. No.	Wastes
1	2
20.	Used Oil and Waste Oil

Import of Waste oil is restricted as per Para 2.08 of the Foreign Trade Policy 2015-20 also read with Rule 12 (1) of Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 as authorization of Central or State Pollution Control Board or Registration under the provisions of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016 is required.

It appears that the importer is not having an authorization issued in their own name under Rule 6 of the Hazardous and other waste (management and Transboundary) Rules 2016. Further, in terms of Section 46(4) of the Customs Act, 1962, the importers of any goods are required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, it appears that the importer had filed Bill of Entry with incorrect particulars and classification, hence the importer has contravened the provisions of section 46(4) of the Customs Act, 1962.

2.4. The imported Fuel Oil declared valued Rs. 31,51,409/- appear classifiable under Custom Tariff Item 27109900 and are imported in violation of the provisions of Hazardous and other waste (management and Transboundary) Rules 2016 read with the provisions of Section 11 of the Customs Act, 1962 and hence appear liable for confiscation under Section 111 (d) of the Customs Act, 1962. The importer for such acts of commission /omission also appears liable for penalty under Section 112 (a) (i) of the Customs Act, at in 1962.

From the test report, it is confirmed that the goods are other than the declared goods and the goods do not appears classifiable under CTH- 27101951 as the sample of the imported goods are waste oil.

2.5. In view of above, it is evident that the importer has mis-declared their goods as fuel oil which is actually Waste Oil. Therefore, the goods imported under above Bill of Entry No. 3093729 dated 05.07.2025 are liable for confiscation under Section 111(d) of the Customs Act, 1962 and liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

3. Relevant Legal Provisions:

3.1. 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.

3.2. Section 46. Entry of goods on importation:

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- *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:

The accuracy and completeness of the information given therein;

The authenticity and validity of any document supporting it; and

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.]

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

a. –

b.

(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;

(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;

3.4. Section 112. Penalty for improper importation of goods, etc. – *Any person,-*

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable,-

- i. *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- ii. *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees,*

whichever is higher:

Provided that where such duty as determined under sub- section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

- iii. *in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 in either case hereafter in this section referred to as the declared value is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*
- iv. *in the case of goods falling both under clauses (i) and (iii), to a penalty 10not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- v. *in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

SHOW CAUSE NOTICE & PERSONAL HEARING

4. The importer vide letter dated 28.08.2025 has requested to release the goods for home consumption since the goods are non-hazardous in nature and the same will be utilized by an actual user with registered license holder having an authorization from CPCB. The buyer of the goods will be in possession of necessary permissions to process and re-cycle used / waste oil.

It is further submitted by the importer that the goods are off specific Fuel Oil/ waste oil. The goods are fuel oil as declared which is just not meeting the IS standard. Please consider our request and release the goods.

DISSCUSSION AND FINDINGS

5. I have carefully gone through the facts of the case available on records. The importer vide letter dated 28.08.2025 has already submitted their consent to re-assess said Bill of Entry. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records.

5.1. I observed that M/s. Smvirani Industries Pvt. Ltd. has imported "Fuel oil" under CTH-27101951 vide Bill of Entry No. 3093729 dated 05.07.2025. Further, the test reports received from CRCL Kandla revealed that the imported goods are "Waste Oil" leading to classification of goods under Chapter 27109900. The importer vide Bill of Entry No. 3093729 dated 05.07.2025 has attempted to import the Waste Oil falling under CTH - 27109900 which are restricted as per the Foreign Trade Policy by mis-classifying the same as "Fuel Oil" and mis-declaring CTH as 27101951. However, the goods classifiable under CTH 27109900 are restricted as per the Foreign Trade Policy.

5.2. M/s. Smvirani Industries Pvt. Ltd. has imported "Waste Oil (Non-

Hazardous)" falling under Chapter 27109900" vide bill of entry no. 3093729 dated 05.07.2025 by mis-classifying the same as 'Fuel Oil' and mis-declaring CTH as 27101951.

5.3. In the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. They mis-declared the classification of the goods under CTH 27101951 instead of the correct CTH of 27109900, with an intention to import restricted goods as per the Foreign Trade Policy. Thus, there is a reason to believe that the importer deliberately and willfully misstated the facts in terms of import of restricted goods. Whereas, the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, *ibid* casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration.

5.4. Therefore, I find that the impugned goods imported vide BE No. 3093729 dated 05.07.2025 having declared value of Rs. 31,51,409/- are liable for confiscation under Section 111(d) of the Customs Act, 1962 and the importer rendered themselves liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

5.5. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the CTH and declaring applicable duty on the imported goods. Therefore, the imported goods are required to be re- classified under CTH-27109900 and the said goods are liable for confiscation under Section 111 (d) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112(a)(i) of Customs Act 1962.

5.6. 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*".

5.7. 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 the fact that the goods are matching the characteristic of fuel oil however being off specific and non-hazardous in nature. Further as stated by the importer, the goods to be sold to registered license holder of CPCB, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject to clearance of goods for Home Consumption with condition to assessment of goods.

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

ORDER

6.1. I order to reject the declared classification i.e. 27101951 of the goods imported vide Bill of Entry No. 3093729 dated 05.07.2025 and classify the goods under CTH 27109900.

6.2. I order for confiscation of the goods imported vide Bill of Entry No.

3093729 dated 05.07.2025 declared as "Fuel Oil" weighing 1,19,490 Kgs having Assessable Value of Rs. 31,51,409/- (Rupees Thirty One Lakhs Fifty One Thousand Four Hundred Nine Only) imported vide Bill of Entry No. 3093729 dated 05.07.2025 under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs.3,00,000/- (Rupees Three Lakhs Only)** under Section 125 of the Customs Act, 1962.

6.3. I impose a penalty of **Rs.1,50,000/-(Rupees One Lakh Fifty Thousand Only)** on the importer M/s. Smvirani Industries Pvt. Ltd. under Section 112 (a) (i) of the Custom Act, 1962.

7. 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.

Additional Commissioner of Customs,
Import Section, CH Mundra

To,
Smvirani Industries Pvt. Ltd.
Office No. 222, 2nd Floor, Shiva Blessing-2,
Opp BMC Office, Bhavnagar - 364001

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.