



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
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A	File No.	CUS/APR/BE/MISC/417/2023-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/38/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	15.05.2023
E	Date of Issue	17.05.2023
F	SCN No. & Date	Importer has requested for waiver of SCN/PH vide letter dated 23.03.2023
G	Noticee/Party/ Importer/ Exporter	M/s. Omax Tradelinks LLP, Regd. Office,:- 212, First Floor, Okhlo Phase-III, New Delhi-110020
H	DIN No.	20230571MO000011451E

1. यह अपील आदेश संबंधित 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),
 7 वीं मंजिल, मुद्रुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, 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 ड्रूटि/ व्याज/ 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 alone is in dispute.

Brief Facts of the Case

The importer, M/s.Omax Tradelinks LLP having address at Regd. Office: 212, First Floor, Okhla Phase-III, New Delhi had filed B/E No.7630195 dated 24.02.2002 for clearance of 188.770 MTS of "Mineral Hydrocarbon Oil". The importer classified the goods under CTH 27101990. The declared assessable value of the goods were Rs.1,04,52,573/-The goods were given first check with the order to draw sample and forwarded the same to CRCL, Kandla for testing to ascertain the nature of cargo.

2. The Lab Report No.7695 dated 01.03.2022 issued by the CRCL Kandla is reproduced below:

"The sample as received is in the form of clear colourless liquid. It is composed of mixtures of mineral hydrocarbon oil having oil content more than 70% by weight and following constants:

Density at 15 Degree Celsius	: 0.8313gm/ml
Flash Point	: 102 Deg.
Celsius	
Initial Boiling Point	: 230 Deg. Celsius
5% (V/v) recovery at	: 259 Deg. Celsius
10% (V/v) recovered at	: 266 Deg.
Celsius	
50% (V/v) recovered at	: 301 Deg.
Celsius	
85% (V/v) recovered at	: 333 Deg. Celsius
95% (V/v) recovered at	: 350 Deg.
Celsius	
Final Boiling Point	: 367 Deg.
Celsius	
Kinematic viscosity at 40 deg.C	: 4.58 cst
Water content (% by mass)	: Nil
Sediments (% by mass)	: Nil
Ash Content (% by mass)	: Nil
Acid Number, mgKOH/gm	: 0.045

It is other than light oil & preparation/solvent (125/240;60/80, 50/120;145/205)/Kerosene/Bio Diesel Blend, Transformer oil & Base oil.

The above tested parameters agrees with HFHSD, however this laboratory does not have the testing facility for sulphur & other parameters as per IS 16731 for further confirmation.

2.1. However, as requested by the importer, samples pertains to the above said BE were forwarded to the Joint Director (Revenue Laboratories), Central Revenues Control Laboratory, New Delhi for re-testing vide this office letter F.No. Cus/Apr/BE/Misc/546/2022-DC/AC-I-O/o Pr.Commr.-Cus dated 30.03.2022 issued by the Dy. Commissioner of Customs, Gr.I,

Customs House, Mundra. Further, this office has again issued another letter bearing F.No.Cus/Apr/BE/Misc/546/2022-DC/AC-I-O/o Pr.Commr.-Cus dated 29.09.2022 to the Head of Keshav Dev Malviya Institute of Petroleum Exploration(KDMIPE), Uttarakhand requested for re-testing., but test report results is still pending from lab. The importer vide their letter dated 19.04.2023 stated that the goods are pending for clearance since long time and they are facing financial loss. Hence, they requested to allow them to re-export the goods.

3. The CRCL, Kandla opined that the sample meets the specification of **High Flash High Speed Diesel**. Thus, it appeared that the subject goods have been imported by the importer by way of mis-declaration as "Mix Hydrocarbon Oil" under CTH 27101990 in the above mentioned Bill of Entry instead of declaring correct description of the goods as High Flash *High Speed Diesel* falling under CTH 27101949(High Speed Diesel as per IS 16861).

4. As per the Schedule I-Import Policy of the ITC (HS), pertaining to Section V Chapter 27, only State Trading Enterprises are permitted to import "High Speed Diesel" which is covered under Tariff Item No. CTH 27101949 of Customs Tariff. As per Para 2.20 of Foreign Trade Policy 2015-20 as extended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). As per the Policy condition stipulated for Chapter 27, the import of goods falling under

CTH 27101949 is as under:-

"Import is allowed through IOC subject to para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS2796 (ITC HS Code 27101241) hand automotive diesel fuel, not containing biodiesel, conforming to standard is1460 (ITC 2710944) which would be allowed to be imported by entities in terms of MOPNG Resolution No. P-12029(II)/2?2018 – OMC- PNG dated 08.11.2019."

5. The importer in this case is neither an STE nor has submitted any documents showing grant of such rights by the DGFT to import or export any of the goods notified for exclusive trading through STEs.

6. It is further noticed that the declared description of the goods in the

bill of entry is 'Mix Hydrocarbon Oil', whereas the goods on being tested, vide test report as mentioned in the preceding Para-2, are found to be 'High Flash High Speed Diesel', which are restricted for importation and clearance thereof.

7 . As per the Schedule 1-Import Policy of the ITC (HS), pertaining to Section V Chapter 27, only State Trading Enterprises are permitted to import 'High Speed Diesel' covered under Tariff Item No. 27101949 of Customs Tariff. As per Para 2.20 of Foreign Trade Policy 2015-20 as extended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). As per the Policy condition stipulated for Chapter 27, import of the goods falling under CTH No. 27101949, are allowed through IOC subject to para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P& NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL, & IBP who have been marketing transportation fuels before this date. It further appears that the importer in the present case is not holding status as STE, hence the subject import made by him appears to be in violation of the Foreign Trade Policy 2015-20 as extended. The subject goods mis-declared with reference to their description are in violation of the permission of the Petroleum Act, 1934 and therefore the same has to be considered in violation of Section 11 of Customs Act, 1962 also upon taking context of Notification No. 105-Cus dated 06.08.1938.

8. Further, in view of the above discussion, the impugned goods valued at Rs.1,04,52,573/- which are imported against the provisions of FTP are "Illegal Import" under the provisions of Section 11 of the Customs Act, 1962 and hence are held liable for confiscation under Section 111 (d) and 111(f) of the Customs Act, 1962. The importer for such acts of commission/omission is also liable for penal action under Section 112 of the Customs Act, 1962.

9. Relevant Legal provisions of other Acts

Policy Condition of Chapter 27 for CTH

Item Tariff	Description	Policy	Condition
27101949----	High Flash High Speed State Diesel Fuel conforming to Trading	Import as per Policy Condition (5)	

Standard IS 16861

Enterprises of Chapter 27.

Condition No. (5) of FTP of Chapter 27 is as below:

(5) Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of MoP & NG Resolution No. P-23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS 2796 (ITC VIS Code: 27101241) and Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460 (ITC HS Code 27101944) which would be allowed to be imported by entities in terms of MOPNG Resolution No. OMC-PNG dated 08.11.2019.

General provisions 2.20 of Foreign Import Policy defines State Trading Enterprises (STEs) as -

(a) State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.

Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992

All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

Para 2.20 of the Foreign Trade Policy, 2015-2020

(a) State Trading Enterprises (STEs) are governmental and nongovernmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.

Provisions of the Petroleum Act, 1934

Section 2- Definitions.—In this Act, unless there is anything repugnant in the subject or context,— (a) “petroleum” means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon; [(b) “petroleum Class A” means petroleum having a flash-point below twenty-three degrees Centigrade; (bb) “petroleum Class B” means petroleum having a flash-point of twenty-three degrees Centigrade and above but below sixty-five degrees Centigrade; (bbb) “petroleum Class C” means petroleum having a flash-point of sixty-five degrees Centigrade and above but below ninety-three degree Centigrade;] (c) 7 [“flash-point”] of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash

when ignited, determined in accordance with the provisions of Chapter II and the rules made thereunder;

Section 7 of the Petroleum Act, 1934— No license needed for transport or storage of limited quantities of petroleum Class B or petroleum Class C.— Notwithstanding anything contained in this Chapter, a person need not obtain a license for the transport or storage of—

- (i) petroleum Class B if the total quantity in his possession at any one place does not exceed two thousand and five hundred litters and none of it is contained in a receptacle exceeding one thousand litters in capacity; or
- (ii) petroleum Class C if the total quantity in his possession at any one place does not exceed forty-five thousand litters and such petroleum is transported or stored in accordance with the rules made under section 4.

Petroleum Rules 1976

Restriction on delivery and dispatch of petroleum. No person shall deliver or dispatch any petroleum to anyone in India other than the holder of a storage license issued under these rules or his authorized agent or a port authority or railway administration or a person who is authorized under the Act to store petroleum without a license.

Rule 19 of the Petroleum Rules, 2002-Production of certificate and license for import—

(1) Every person desiring to import petroleum shall furnish personally or through his agent to the Commissioner of Customs. —

(a) certificate of storage accommodation in Form II signed by such person or his agent; and

(b) the license or an authenticated copy of the license for the import and storage of such petroleum: Provided that nothing in this rule shall apply to the importation, otherwise than in bulk of petroleum exempted under sections 7, 8, 9 and 10 of the Act: Provided further that the furnishing of a license under clause (b) shall not be necessary for the importation of petroleum

class C in bulk in quantity exempted under section 7 of the Act.

(2) Notwithstanding anything contained in sub-rule (1) a person may import petroleum Class A in bulk, even if -

- (i) he is not holding a license for storage at the port of importation; or
- (ii) the storage accommodation in the premises licensed in his name is not sufficient to hold the quantity of petroleum intended to be imported: Provided in both cases adequate advance arrangements to the satisfaction of the Conservator are made by the importer to distribute the petroleum from the port of import to premises licensed to store such petroleum.

SECTION 111 (d) & (f) OF THE CUSTOMS ACT, 1962

111. Confiscation of improperly imported goods etc.

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

to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

SECTION 112(a) OF THE CUSTOMS ACT, 1962

112 . Penalty for improper importation of goods, etc.

Any person,—

- a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, shall be liable,—*
 - (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

Show Cause Notice & Personal Hearing

10. The Importer vide their letter dated 23.03.2023 & 19.04.2023 has requested to decide the matter on merit and to allow them for re-export of the goods imported vide Bill of Entry No.7630195 dated 24.02.2023 to the Supplier. The Importer has also submitted that they do not want any Show Case Notice or Personal Hearing in this matter.

DISCUSSION AND FINDINGS

11. I have carefully gone through the case records and applicable provisions of law. Importer vide letters dated 23.03.2023 & 19.04.2023 has requested to allow re-export of the good imported vide Bill of Entry No.7630195 dated 24.02.2023. The importer submitted that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of principle of natural justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

11.1 I find that the importer M/s Omax Tradelinks LLP has declared

goods as "Mix Hydrocarbon Oil" in the aforesaid Bill of Entry. The subject goods were examined on first check basis and representative samples were sent for testing. As per CRCL Kandla test report, the goods have the characteristics of High Speed Diesel confirming to standard IS 16861 falling under CTH 27101949 and not "Mix Hydrocarbon Oil" under CTH 27101990. Hence, the importer has imported High Flash High Speed Diesel, restricted goods by mis-declaring and mis-classifying as Mix Hydrocarbon Oil.

11.2 I find that the goods falling under tariff heading 27101949 are restricted and allowed to be imported through State Trading Enterprises (STE) only as per Policy Condition of the Chapter-27 of ITC (HS), Schedule-I.

The Policy condition of the Chapter 27 is reproduced below: -

"Import allowed through IOC subject to para 2.20 of Foreign Trade Policy except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG's Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date".

The Para 2.20 of the Foreign Trade Policy is reproduced below: -

"2.20 State Trading Enterprises (STEs)

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.

(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

(c) DGFT may, however, grant an authorization to any other person to import or export any of the goods notified for exclusive trading through STEs.”

11.3 I find that the policy provisions mentioned in the Indian Trade Classification (Harmonised System) of Import in the Schedule-I is binding as per the FTP 2015-20, Chapter-2 and Paragraph 2.20 thereto.

11.4 In view of the discussions made in para supra, I find that the importer has tried to import “High Flash High Speed Diesel” by mis-declaring the same as “Mix Hydrocarbon Oil” classifying their product under CTH- 27101990 instead of CTH 27101949. The importer has violated the provisions of FTP and Customs Act, 1962. This act has rendered the subject goods liable to confiscation under Section 111(d) and 111(f) of the Customs Act, 1962

11.5 In view of the above, the acts of omission and commission of the importer has rendered the goods liable for confiscation under Section 111(d) and 111(f) of the Customs Act, 1962 and thereby rendering the importer liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

11.6. I find that importer vide letter dated 13.03.2023 & 23.03.2023 has requested for the re-export of goods i.e. High Flash High Speed Diesel in respect of aforesaid Bill of Entry. I find it appropriate to allow re-export of the subject goods subject to redemption under section 125 of the Customs Act, 1962. Section 125 of the Customs Act, 1962 provides that whenever confiscation of any goods is authorized by the Customs Act, 1962, the officer adjudging it 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 fine as the said officer thinks fit. However, in this case redemption is being allowed only for re-export and thus, there will be no margin of profit. Quantum of redemption fine is being decided considering this fact.

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

ORDER

12.1 I reject the declared classification of imported goods “Mix

I/1185922/2023

Hydrocarbon Oil" which were classified under CTH 27101990 and order the same to be re-classified under CTH- 27101949 High Flash High Speed Diesel in view of Lab Test Report dated 01.03.2022.

12.2 I order for confiscation of imported goods valued at Rs.1,04,52,573/- (Rupees One Crore Four Lacs Fifty Two Thousand Five Hundred Seventy Three Only) covered in the Bill of Entry No. 7630195 dated 24.02.2022 under Section 111(d) and 111(f) 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 for re-export purpose only.

12.3 I also impose a penalty of Rs. **7,00,000/-** (Rupees Seven Lakhs Only) on the importer M/s. Omax Tradelinks LLP under Section 112 (a)(i) of the Customs Act, 1962.

12.4 I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above. The re-export to be made to the same supplier within a period of two months from the date of receipt of this order.

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.

Signed by
Mukesh Kumari
Date: 15-05-2023 14:00:46
MUKESH KUMARI
ADDITIONAL COMMISSIONER-I
Import Section, CH Mundra

F.No. CUS/APR/BE/MISC/417/2023-Gr 1

Date:15-05-2023

To,

M/s. Omax Tradelinks LLP,
Regd. Office,:- 212, First Floor,
Okhlo Phase-III,
New Delhi-110020

Copy to:-

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra

I/1185922/2023

3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. Guard File.