



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुरानेहाईकोर्ट केसमने, नवरंगपुरा, अहमदाबाद – 380 009.

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DIN:

PREAMBLE

A	फाइल संख्या / File No.	:	VIII/10-199/ICD-Sachana/O&A/HQ/2024-25
B	कारण बताओनोटिस संख्या – तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by the Importer
C	मूल आदेश संख्या / Order-In-Original No.	:	117/ADC/VM/O&A/2024-25
D	आदेश तिथि / Date of Order-In-Original	:	07.08.2024
E	जारी करने की तारीख / Date of Issue	:	07.08.2024
F	द्वारा पारित / Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयात कक्षानाम और पता / Name and Address of Importer / Passenger	:	M/s. Mac Paper Mill, Survey No. 419 to 429, Lanva Manund Road, Shelavi, PO. Palasar, Tal. Chanasma, Dist. Patan, Gujarat - 384229
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (5.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief Facts of the case:

Based on NCTC Alert 394/IMP/2023-24 received on 23.05.2023, intimating that UAE has banned export of Waste Paper under CTH 4707 vide Dubai Customs Notices/ Orders 08/2022, 05/2023 and 06/2023. The consignment of **M/s. Mac Paper Mill**, Survey No. 419 to 429, Lanva Manund Road, Shelavi, PO. Palasar, Tal. Chanasma, Dist. Patan, Gujarat - 384229 (for brevity 'the Importer') covered by Bill of Entry No. 5806658 dated 04.05.2023 filed through their Customs Broker M/s. Ajay Logistics Pvt. Ltd., Ahmedabad (for brevity 'CB') for import of 250.290 MT of goods in ten (10 x 40') containers declaring the same as 'Waste Paper Corrugated Containers' CTH 47071000 from M/s. Alpha Emirates LLC, Dubai, UAE, showing country of origin to be 'United Arab Emirates' was examined by the Shed Staff, ICD - Sachana, Ahmedabad accordingly. The details are as under:

S. No.	Bill of Entry and dated	Bill of Lading No.	Container No. (20' Container)	Quantity / Net Weight (MT) declared (BOE)	Description of goods declared
1	5806658 dated 04.05.2023	MAEU226702474 dated 04.05.2023	HASU4475037 GCXU5684660 TLLU6844319 TEMU6182510 DFSU6058019 MRSU5496672 MRSU6537436 CAAU6551231 TCKU7124160 MRSU3097143	250.290	Waste paper Corrugated Container (HSN 47071000)

2. The said consignment was examined at import yard of ICD-Sachana, Ahmedabad and the consignment was found to comprise of 'Waste Paper Corrugated Containers'.
3. Waste paper import permitted in the Country to the actual user or to the trader on behalf of the actual user authorised by SPCB on onetime basis subject to verification of documents specified in scheduled VIII of the rules. The supporting documents required for import of waste paper includes Certificate of Origin, PSIC, Self-declaration cum undertaking of Supplier, Certificate of chemical analyst. In the absence of these documents, import of waste paper become restricted/ prohibited for import. Hence, the goods so imported

fall under the category of restricted goods; and that the restricted goods also fall under the definition of 'prohibited goods', as defined under Section 2(33) of the Act.

4. The importer in this regard submitted the copy of the Certificate of Origin, PSIC, Self-declaration cum undertaking of Supplier, Certificate of chemical analyst while presenting Bill of entry before Customs.

5. The import documents filed with the Bill of Entry also reveal the UAE origin of the import goods, but the export of waste paper under CTH 4707 from United Arab Emirates is prohibited.

6. Therefore, on the reasonable belief that the goods imported by the importer are liable for confiscation under Section 111 of the Customs Act, 1962 (for brevity 'the Act') as the same were imported without any valid PSIC/ importer had mis-declared the country of origin in contravention of the provisions of the Section 46(4) of the Customs Act, 1962, the same were seized under Section 110 of the Customs Act vide seizure memo dated 22.06.2023.

7. From the foregoing, it appears that the impugned goods, have been imported in contravention of the provisions contained in Section 46(4) and 46(4A) of the Act read with FTP, 2015-2020 and 2023. The goods so imported fall under the category of restricted goods and the restricted goods also fall under the definition of 'prohibited goods', as defined under Section 2(33) of the Act. The same thus, appear liable for confiscation under Section 111(d) of the Act. Further, the Importer has also rendered itself liable for penal action under Section 112(a)(i) of the Act.

SUBMISSIONS OF THE IMPORTER:

8. The importer has been explained the contraventions involved in the import of impugned goods verbally and they accepted the same. The importer vide letter dated 28.06.2023 requested to release their cargo provisionally on furnishing of Bond and Bank Guarantee and the

cargo was released to them. The importer vide letter dated 30.06.2024 informed that they do not want any show cause notice and personal hearing in the matter, and the matter may be decided on the basis of records available.

DISCUSSION AND FINDINGS: -

9. I have gone through the facts of the case. I find that the genesis of the whole issue is that there has been import of 'Waste Paper Corrugated Containers' showing country of origin as 'UAE' in-spite of the fact that there had been complete ban of export of such waste paper from UAE during the period from October, 2022 to June, 2023 and the same has been extended upto September, 2023. I find that the present case of the Importer is also covered by the situation.

10. Before deliberating on the evidences in hand before me, I find that the Importer has provided the export documents filed by the supplier before their respective Customs Authorities. In this regard, I find that at the stage of adjudication, non-availability or availability of such export documents would not have much bearing on the final outcome of the issue, as the present adjudication proceedings are already taking care of the aspect of confiscation of the impugned goods only, in the light of alleged violations leading to confiscation under Section 111 of the Act. Thus, the present adjudication proceedings are without prejudice to any other action that may be necessitated / taken, in view of any other evidences surfacing subsequently.

11. I find that investigations in the matter had been conducted from the following:

- i. The Importer with respect to the export documents;
- ii. The import documents filed by the importer while filing the Bill of Entry with respect to the movement of the containers from the port of origin to the destination port;

12. Similarly, as per import documents, filed while filing the impugned Bill of Entry, in respect of the containers covering the impugned consignment it comes out that the containers have

originated from UAE only. The above, details show the Port of Loading to be Jabel Ali and final destination to be ICD Sachana.

13. As regards the issue related to PSIC, I find that O.M. dated 13.06.2023 issued by the DGFT clarified that:

*"if there are cases where 'PSIC' shows place of inspection in UAE and import item is banned by UAE for export, it may tantamount to mis-declaration on the part of PSIA and such PSIC may be treated as **invalid**".*

(Emphasis supplied)

14. In view of the clarification of DGFT, it is amply clear that the imported goods "Waste Paper Corrugated Containers" falling under CTH: 4707 has been banned by UAE for export during the material time. Further, I find that in the instant case, the importer has imported impugned goods i.e. waste paper Corrugated Containers accompanying the mandatory pre-shipment inspection certificate (PSIC), which tantamount to be invalid as per O.M. dated 13.06.2023 issued by the DGFT.

15. Waste paper import permitted in the Country to the actual user or to the trader on behalf of the actual user authorised by SPCB on onetime basis subject to verification of documents specified in scheduled VIII of the rules. The supporting documents required for import of waste paper includes Certificate of Origin, PSIC, Self-declaration cum undertaking of Supplier, Certificate of chemical analyst. In the absence of these documents, import of waste paper become restricted/ prohibited for import. Hence, the goods so imported fall under the category of restricted goods; and that the restricted goods also fall under the definition of 'prohibited goods', as defined under Section 2(33) of the Act.

In the present case, the export of waste paper falling under CTH 4707 has been banned by UAE and as such the documents produced by the importer mentioning the Country of Origin and PSIC appears to be mis-declaration on the part of importer. Further, in certain export documents like, Bill of lading, PSIC and Beneficiary's Certificate of Origin the CTH mentioned as 47071000, whereas importer mentioned

the CTH as 47071000 in the Bill of Entry which is proper and not considered as mis-declaration on the part of importer.

16. I further observe that Section 2(33) of the Customs Act, 1962, defines "prohibited goods" as under:

"Means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

17. The above definition of "prohibited goods" includes not only goods whose import is prohibited but also those whose import is "restricted" subject to fulfilment of the specified conditions and if such conditions are not fulfilled would qualify as prohibited goods as defined in Section 2(33) of the Act. In this regard, the reliance is placed on the judgment of Hon'ble Supreme Court in the case of Om Prakash Bhatia Versus Commissioner of Customs, Delhi [2003 (155) E.L.T. 423 (S.C.)] where under relying upon the judgment in the case of Sheikh Mohd. Omer Vs. C. Cus 1970(2) SCC 28 the Hon'ble Supreme Court has held that prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after clearance of goods and if conditions are not fulfilled, it may amount to prohibited goods under Section 2(33) of the Act. The relevant Para 9 of the judgment is reproduced here-in-under:

"9. From the aforesaid definition, it can be stated that (a) if there is any prohibition of import or export of goods under the Act or any other law for the time being in force, it would be considered to be prohibited goods; and (b) this would not include any such goods in respect of which the conditions, subject to which the goods are imported or exported, have been complied with. This would mean that if the conditions prescribed for import or export of goods are not complied with, it would be considered to be prohibited goods. This would also be clear from Section 11 which empowers the Central Government to prohibit either 'absolutely' or 'subject to such conditions' to be fulfilled before or after clearance, as may be specified in the notification, the import or export of the goods of any specified description. The notification can be issued for the purposes specified in sub-section (2). Hence, prohibition of importation or exportation could be subject to certain prescribed conditions to be fulfilled before or after

*clearance of goods. If conditions are not fulfilled, it may amount to prohibited goods. This is also made clear by this Court in *Sheikh Mohd. Omer v. Collector of Customs, Calcutta and Others* [(1970) 2 SCC 728] wherein it was contended that the expression 'prohibition' used in Section 111(d) must be considered as a total prohibition and that the expression does not bring within its fold the restrictions imposed by clause (3) of the Import Control Order, 1955. The Court negated the said contention and held thus: -*

...What clause (d) of Section 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to in that section applies to every type of "prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in Section 111(d) of the Customs Act, 1962 includes restrictions. Merely because Section 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition" in Section 111(d) of the Act. "Any prohibition" means every prohibition. In other words, all types of prohibitions. Restriction is one type of prohibition. From item (I) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But nonetheless the prohibition continues."

18. Thus, I hold that the import of impugned goods in this case fall under the category of import of restricted goods, in view of above discussion, therefore, the restricted goods so imported also fall within the definition of prohibited goods as contained in Section 2(33) of the Customs Act, 1962 and para 2.32 & 2.51 of the Import-Export Policy 2015-2020 and in of the Customs Act, 1962. Thus, the impugned consignment is liable to be confiscated under Section 111(d) of the Act.

19. For their various acts of omission and commission, I find that the importer has also held themselves liable for penal action under Section 112(a)(i) of the Act for above said contraventions.

20. It is also noticed that as requested by importer vide letter dated 28.06.2023, the order dated 19.07.2023 has been issued for provisional release of the seized imported goods on furnishing of Bond for an appropriate amount supported with Bank Guarantee. On furnishing of Bond supported by Bank guarantee the seized goods

imported wide BE No: 5806658 dated 04.05.2023 were released provisionally to the importer.

21. I find that the goods seized under present case has been released to the importer on furnishing bond and bang guarantee by the importer as per the provisions of Section 125(1) of the Customs Act, 1962.

22. I find once goods liable to confiscation under Section 111(d) and Section 111(m) their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, redemption fine in lieu of confiscation needs to be imposed even if the imported goods are not available. In this regard, I rely on the judgment of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L 142 (Mad.) wherein the Hon'ble High Court of Madras has held that:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act....."

(Emphasis supplied)

23. I find that the Hon'ble CESTAT in the case of M/s Sai International & others vide Final Order No. 20647-2066312017 in Appeal no. C1526-54112007 & C165612008 has held as under: -

"7. After considering the submissions of both the parties and the perusal of the various decisions, I am of the considered view that the issue of imposition of redemption fine and penalty has been settled and now various Benches of the Tribunal have consistently held that the redemption fine of 10% of the value of the goods and penalty of 5% of the value of the goods is sufficient punishment to the importer. Therefore, following the ratios of various decisions cited supra, I hold that the imposition of redemption fine to the extent of 10% of the value of the goods and penalty of 5% of the value of the goods is sufficient and I accordingly reduce the redemption fine and penalty to 10% and 5%. Accordingly, the appeals are disposed of in above terms."

(Emphasis supplied)

24. Therefore, redemption fine in lieu of confiscation is imposable on the said imported goods which were placed under seizure vide seizure memo dated 22.06.2023 and subsequently provisionally released. Further, Bond and Bank guarantee furnished by the importer for provisional release of said goods is invokable and required to be enforced for recovery of Customs Duty along with other charges.

25. As the impugned goods are found to be liable for confiscation under section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125(1) of the Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the imported goods, which have been imported in violation of Foreign Trade Policy. The Section 125(1) ibid reads as under: -

"Section 125. Option to pay fine in lieu of confiscation. -Whenever confiscation of any goods is authorized 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:"

26. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine. From the perusal of above-mentioned provision, it emerges very clearly that in respect of prohibited goods, the proper officer may grant option to redeem the goods.

27. Accordingly, I hold that: -

- (i) 250.290 M.T. of 'Waste Paper Corrugate Containers' valued at Rs.34,33,916/- imported vide Bill of Entry No: 5806658 dated 04.05.2023 is liable for confiscation under Section 111(d) of the Act.
- (ii) The importer is liable for penal action under the provisions Section 112(a)(i) of the Act.

28. In view of the facts and circumstances of the case, I pass the following order in respect of Bill of Entry No. 5806658 dated 04.05.2023.

ORDER

- (i) I order confiscation of 250.290 M.T. of 'Waste Paper Corrugate Containers' valued at Rs.34,33,916/- under Section 111(d) of the Customs Act, 1962. I give an option to the importer M/s. Mac Paper Mill to redeem the said goods on payment of Redemption Fine of **Rs.1,00,000/-** (Rupees One Lakh Only) in lieu of confiscation under Section 125 of the Customs Act, 1962.
- (ii) I impose penalty of **Rs.25,000/-** (Rupees Twenty-Five Thousand Only) upon the importer under Section 112(a)(i) of the Customs Act, 1962 for violations of the provisions of law as discussed above.

Vishal
7/8/24
(VISHAL MALANI)
Additional Commissioner
Customs, Ahmedabad

F. No: VIII/10-199/ICD-Sachana/O&A/HQ/2024-25
DIN: 20240871MN000000CBE5

Date: 07.08.2024

Through Speed Post/ E-mail/ Hand Delivery

To,
M/s. Mac Paper Mill,
Survey No. 419 to 429,
Lanva Manund Road, Shelavi,
PO. Palasar, Tal. Chanasma,
Dist. Patan, Gujarat – 384229.

Copy to: -

1. The Principal Commissioner, Customs, Ahmedabad. (Kind Attn: RRA Section)
2. The Deputy/Assistant Commissioner, ICD Sachana, Customs, Ahmedabad.
3. Superintendent (Systems), for uploading on the website.
4. Guard File.