

		<p align="center">OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467</p>	
DIN- 20240971ML000000FA4B			
A	File No.	GEN/ADJ/ADC/1132/2024-Adjn-O/o Commr-Cus-Kandla	
B	Order-in-Original No.	KDL/ADC/DPB/24/2024-25	
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.	
D	Date of Order	18.09.2024	
E	Date of Issue	18.09.2024	
F	SCN NO. & Date	GEN/ADJ/ADC/1132/2024-Adjn-O/o Commr-Cus-Kandla dated 27.06.2024	
G	Noticee / Party / Importer / Exporter	M/s. K and K Rubber, Plot No 288/E, NU-4, Sapna Nagar, Gandhidham-370201	

1. यह मूल 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 मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्कअधिनियम 1962 की धारा 128A 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:

“ सीमाशुल्कआयुक्त (अपील),

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

“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 पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये 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 accompany 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.

5. 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.

BRIEF FACTS OF THE CASE

M/s. K and K Rubber, Plot No 288/E, NU-4, Sapna Nagar, Gandhidham-370201 (IEC: CRRPD4738C) (hereinafter referred to as 'Importer') filed Bill of Entry no. 2268447 dated 23.02.2024 through their CB M/s. R R Logistics for import of Used tyres for ADV (i.e. Animal Driven Vehicle) and LSV purpose of different size declaring goods under CTH 40122090. The said BE is self assessed by the Importer as provided under Section 17(1) of the Customs Act, 1962.

After investigation by team of Officers working with SIIB, Customs, Kandla issued their Investigation Report Dated 26.06.2024, wherein, interalia, reported that-

2. Investigations were carried out based on the NCTC Alert No. 1134/IMP/2023-24 dated 22.02.2024 regarding risky consignment at INMUN1 transshipped to A V JOSHI CFS. The NCTC has identified shipment of the importer, M/s. K and K Rubber Corporation, IGM filed at Customs House, Mundra (INMUN1) destined to Gandhidham (INGIN6) i.e. M/s A V Joshi CFS, which appeared to be risky for concealment of prohibited/restricted items. Accordingly, this office first located the cargo which was found to be at CFS i.e. M/s A V Joshi and immediately put on Hold the cargo in the container No. EGHU9092253 by the Team working at SIIB, Customs, Kandla.

3. The examination was carried out under Panchnama Dated 11.03.2024 and since the declared goods are of Old and Used, obtained services of the Chartered Engineer Shri B.G. Bhatt, Government Approved Chartered Engineer and was present on 11.03.2024. Upon Examination Shri B. G. Bhatt, Chartered Engineer submitted their report on 16.04.2024 wherein interalia, submitted that total 2257 tyres are imported. Out of which NO TYRES is having diameter 19" & width suitable for ADV (Animal Drawn Vehicle). These all 2257 tyres can be used for Motorized vehicles only.

The old and used tyres were older more than 2-3 years. All the tyres were tubeless radial tyres and requires special wheel rim which prevents air leakage and ADV wheel rims are not suitable for such tubeless radial tyres. The tyres of less diameter could not be fitted in the Animal drawn vehicle. In the lieu of details of YOM of individual tyre, based upon visual condition and bristles present upon the side surface of, as the most of the tyres are imported as discarded winter tyres, average total depreciation for more than 5-years as 54% is estimated. (It is pertinent to note that the tyres could not be used, if it got converted in to brittle condition, here none of the tyre was noticed brittle; **accordingly depreciation is considered @ 54%**).

4. Based on the report submitted by the Government approved Chartered Engineer, the officers seized the consignment vide Seizure Memo (DIN: 20240571ML0000999AFC) dated 01.05.2024, under Bill of Entry No. 2268447 dated 23.02.2024 under section 110 of the Customs Act 1962.

In the statement, Shri Vishal Dheda Proprietor of M/s K and K Rubber Corporation had voluntarily submitted that

- His firm is engaged in supply of Old and Use tyres to his clients situated in Ahmedabad and Delhi.
 - He had known some suppliers who are engaged in trading of old and used tyres service and they have approached him for supplying old and used tyres and they assured him to sell all tyres and therefore he imported this consignment.
5. Further, submitted that as per his knowledge, old and used tyres with sizes above 19 inches are suitable for use as ADV purpose. He had imported tyres ranging from 12 inches to 17 inches and purpose for his import was for ADV, push Card and LSV purpose as told by his clients. He is trading the said tyres to his clients and he don't know for what purpose they may use the same. He cannot assure that his clients would use the same for ADV Push Cart and LSV purpose.
6. As per the BIS norms tyres having 19 inches or above are suitable for Animal Driven Vehicle; whereas, imported tyres are ranging from 12 inches to 17 inches and had imported by declaring them as ADV Tyres under HSN 40122090, is gross misdeclaration. Said goods falls under HSN 40122020 and are restricted in nature for import in India.
7. Referred to OM F.No. 23-61/2015-HSMD dated 24.11.2015, SOP with regard to recycling from Waste Pneumatic Tyre was issued. Vide the said SOP, both

'waste pneumatic tyres' and 'used pneumatic tyres' come under item B-3140 of schedule-3 part-B of the HWM Rules, 2008 - thus prior permission from Ministry of Environment would be necessary for import. Further, import of used tyres for direct re-use has been prohibited in the country.

8. Further, as per the Schedule VI of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, waste pneumatic tyres for direct reuse are prohibited for import.
9. As per Notification dated 04.04.2016, the Ministry of Environment, Forest and Climate Change notified Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, the old and used tyres falls under the ambit of other tyres and import for direct re-use has been prohibited in the country.

As per the provision 12(4) of the Hazardous Waste Management Rules, 2016, *the import of other wastes in Part B of Schedule III may be allowed to actual users with the permission of the Ministry of Environment, Forest and Climate Change.*

10. Further, as per the provision 13(1) of the Hazardous Waste Management Rules, 2016, *Actual users intending to import or transit for transboundary movement of hazardous and other wastes specified in Part A and Part B of Schedule III shall apply in Form 5 along with the documents listed therein, to the Ministry of Environment, Forest and Climate Change for the proposed import together with the prior informed consent of the exporting country in respect of Part A of Schedule III waste, and shall send a copy of the application, simultaneously, to the concerned State Pollution Control Board for information and the acknowledgement in this respect from the concerned State Pollution Control Board shall be submitted to the Ministry of Environment, Forest and Climate Change along with the application.*
11. Further, Footnote of the Part B of Schedule III clearly states that the wastes in Part- B are restricted and cannot be allowed to be imported without permission from the Ministry of Environment, Forest and Climate Change and the Directorate General of Foreign Trade license, if applicable.
12. In view of the above, the Old and Used Tyres fall under the category of Other Tyres and cannot be allowed to be imported without permission from the MOEF.
13. Hence, the sole purpose to import these tyres appeared to be to reuse these tyres in automobiles.

14. Also, as per section 2(33) of the customs Act 1962, "prohibited goods" 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.
15. Since the goods in question were improperly imported and fell in the category of 'prohibited goods', the provisions contained in Chapter XIV of the Customs Act, 1962 come into operation and the subject goods are liable to confiscation under the Customs Act 1962.
16. Accordingly, a Show cause notice F.No. GEN/ADJ/ADC/1132/2024-Adjn-O/o Commr-Cus-Kandla dated 27.06.2024 was issued to M/s K and K Rubber Corporation, as to why
- (i) The declared classification i.e. CTH 40122090 of total 2257 Old and used tyres under Bill of Entry Nos. 2268447 dated 23.02.2024 should not be rejected and the same should not appropriately be classified under CTH 40122020 of Used pneumatic tyres for passenger automobile vehicles, including two wheelers, three wheelers and personal type vehicles.
 - (ii) The declared assessable value as declared in the Bill of Entry No. 2268447 dated 23.02.2024 should not be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007.
 - (iii) Total 2257 used pneumatic tyres for passenger automobile vehicles, including two wheelers, three wheelers and personal type vehicles having revised value amounting to Rs 46,22,336/- under Bill of Entry No. 2268447 dated 23.02.2024 should not be held liable for absolute confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 as per Annexure-A.
 - (iv) Penalty should not be imposed on the importer under Section 112 of the Customs Act, 1962.
 - (v) Also to Shri Vishal Dheda (Prop. Of M/s K and K Rubber Corporation) are individually and separately hereby called upon to show cause as to why, the Penalty should not be imposed on him separately under Section 112 and 114 (AA) of the Customs Act, 1962.

WRITTEN SUBMISSION AND PERSONAL HEARING

16. The importer vide their letter Dated 25.07.2024 made submission with a request for provisional release of the goods covered under Seizure Memo Dated 01.05.2024 and under Show Cause Notice issued by the Additional Commissioner, Customs, Kandla.
17. Personal Hearing was held on 08.08.2024, wherein Shri Vishal K Dedha, Proprietor of M/s K and K Rubber Corporation, attended and during hearing interalia, reiterated the submission made vide letter Dated 25.07.2024.

DISCUSSION & FINDING

18. 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.
19. Gone through the Show Cause Notice and matter before me is to decided on the Importability of the Goods under Bill of Entry and Valuation of the same.
20. I find that, the noticee approached the Hon'ble High Court of Gujarat with a request to release the goods on provisional basis. The Advocate of the department submitted that if any application is filed by the noticee for provisional release of the goods, the same shall be considered in accordance with law within a period of four weeks from the date of receipt of the same.
21. M/s. K & K Rubber, vide letter dated 25.07.2024 requested for provisional release of the goods while citing various case laws stating that their goods were not prohibited in nature and the report submitted by the Chartered Engineer was not allowed as he was not empanelled in the Public Notice No. 05/2021 issued by the Commissioner, Customs, Kandla.
22. In this regard, it is pertinent to note that, in consideration of request for change in Chartered Engineer and nomination from the Public Notice issued from the Customs, Kandla and Report submitted by Shri B. G. Bhatt, would not affect about the questions of nature of goods whether prohibited or not. Therefore, the same is not tenable.

23. Further, it is settled law under Customs Act, for valuation of imported old and used goods from Chartered Engineer, and is an independent agency having specialized knowledge, therefore, there is no reason to doubt the examination report submitted by them including valuation of the goods under Import. Therefore, I hold that the value ascertained by the Government Valuer, as discussed above, are true, correct and fair value.
24. Therefore, I find that transaction value of the subject imported goods appeared is liable to be rejected under rule 12 and required to be re-determined under Rule 9 of the Customs Valuation Rules, 2007, read with Section 14 of the Customs Act, 1962.
25. Value derived under Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the Deductive Value is worked out at **Rs.46,22,336/-**.
26. Further on going the facts discussed in the Show Cause Notice, the size of the goods under import as not as per the size specified for the declared purpose as per norms issued by various Govt. agencies in India. Therefore, there is gross misdeclaration of the goods and as discussed earlier, the same is covered under Prohibited Category.
27. Hence, as per Para 2 of the Circular 35/2017-Customs dated 16.08.2017, it is seen that the said provisions categorically mention that provisional release of goods, prohibited under Customs Act, 1962 and any other act, shall not be allowed. In the instant case, the subject goods falls under the category of prohibited goods in nature.
28. I find that the imported goods, 'Old and Used Tyres for A.D.V. Purpose' of different sizes, have been imported in violation of Para 2.31 of FTP condition, wherein all Second Hand / Used Goods, other than capital goods are restricted and requires an Authorization for Import. However, the importers have not produced any authorization issued by DGFT for importation of the used and old tyres. Further, the Importer is not having any valid License for Import of the same. Thus, it is held that imported goods are liable for confiscation under Section 111 (d) of the Customs Act, 1962. The Section 111(d) provides for confiscation of goods which are imported / attempted to be imported contrary to any restriction imposed by or under the Customs Act, 1962 or any other law for

the time being in force. Therefore, I find that the old and used tyres imported vide BE are liable to confiscation under Section 111(d) of the Customs Act, 1962.

29. Section 125 of the Customs Act, 1962 provides that whenever confiscation of any good 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.

30. I find that the said provision makes it mandatory to grant an option to 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 adjudging the case which has to be exercised in view of facts and circumstances of the case.

31. I find that the importer has contravened the provisions of the Import Policy as they could not produce valid license for importation of the goods. Thus, I find that the importer has deliberately imported restricted goods and rendered the subject imported goods liable for confiscation under Section 111(d) of the Customs Act, 1962. For the said deliberate act, I find that the importer is liable for penalty under Section 112(a) of the Customs Act, 1962.

In view of the foregoing discussion and findings, I pass the following order.

ORDER

(i) I order to reject the declared classification i.e. CTH 40122090 of total 2257 Old and used tyres under Bill of Entry Nos. 2268447 dated 23.02.2024 and the same should appropriately be classified under CTH 40122020 of Used pneumatic tyres for passenger automobile vehicles, including two wheelers, three wheelers and personal type vehicles.

(ii) I order to reject the declared assessable value in the Bill of Entry No. 2268447 dated 23.02.2024 under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and to re-determined under Section 14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007 with revised value amounting to Rs 46,22,336/-.

(iii) I order to absolute confiscate the goods under Import in Bill of Entry No. 2268447 Dated 23.02.2024 as per provisions of Section 111(d) and 111(m) of the Customs Act, 1962.

(iv) I impose, penalty of Rs. 4,62,233/- on the importer i.e. M/s K and K Rubber Corporation under Section 112 of the Customs Act, 1962.

(v) I order to impose, Penalty of Rs. 4,62,233/- on Shri Vishal Dheda (Prop. of M/s K and K Rubber Corporation) under Section 112 of the Customs Act, 1962.

(vi) I order to impose, Penalty of Rs. 5,00,000/- on Shri Vishal Dheda (Prop. of M/s K and K Rubber Corporation) under Section 114 (AA) of the Customs Act, 1962.

32. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

(Dev Prakash Bamanavat)
Additional Commissioner

DIN- 20240971ML000000FA4B
To,

M/s. K and K Rubber,
Plot No 288/E,
NU-4, Sapna Nagar,
Gandhidham-370201

Copy to:-

- (i) The Assistant Commissioner, SIIB, Custom House Kandla.
- (ii) The Assistant Commissioner, RRA, Custom House Kandla.
- (iii) The Assistant Commissioner, TRC, Custom House Kandla
- (iv) The Assistant Commissioner, Disposal, Custom House, Kandla.
- (v) Guard File.