

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- commr-cusmundra@nic.in	
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A	File No.	CUS/APR/BE/MISC/709/2022-DC/AC-I-O/o-Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/47/2024-25
C	Passed by	Arun Kumar, Additional Commissioner (Import), Custom House Mundra.
D	Date of order	20.05.2024
E	Date of Issue	20.05.2024
F	SCN No. & Date	The importer has requested for waiver of SCN and PH
G	Noticee / Party / Importer	M/s. Lucky Chemicals Corporation, Address-Lucky Heights, 12/3, New Palasiya, Indore, M.P-452003
H	DIN	20240571MO00008858D8

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. Lucky Chemicals Corporation, situated at Lucky Heights, 12/3 New Palasiya, Indore, M.P - 452007 (IEC No - 5615001623) hereinafter referred as the "importer" has filed Bill of Entry No. 7908099 dated 17.03.2022 through their CHA M/s. Shivam Seatrans Private Limited (CHA Lic no. AARCS4575NCH001) for import of "Mixed Mineral Hydrocarbon Oil" (CTH-27101990).

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
7908099 dated 17.03.2022	Mixed Mineral Hydrocarbon oil" (CTH-27101990).	181450	1,02,67,301/-	25,14,462/-

2.1 In the said Bill of entry, 100% examination was done by the Docks examination officers on 23.03.2022 and samples were sent to CRCL, Kandla vide Test Memo No. 1117799 dated 23.03.2022 for testing purpose. The goods /cargo of the said bill of entry was stuffed in 10*20 feet containers. The CRCL, Kandla vide Test Report Lab No. 8246/24.03.2022 has submitted that tested parameters agree with Kerosene.

2.2 The importer vide their letter dated 06.04.2022 has requested for provisional release of the cargo imported vide Bill of Entry no. 7908099 dated 17.03.2022 for re-export purpose. The re-export of the cargo was allowed on Test Bond of entire value and Bank Guarantee of 10% of the cargo value and the cargo was provisionally released for re-export purpose and the same was communicated to the importer vide letter F. No. CUS/APR/MISC/709/2022-DC-I-O/COMMR-CUS dated 29.04.2022. The importer has submitted a Bank Guarantee No. 1314NDDG00026123 dated 19.04.2023 amounting to Rs.10,27,000/- and Test Bond of full value for release of the cargo. The cargo was re-exported vide Shipping Bill No. 1333487 dated 12.05.2022.

2.3 On the request of the importer remnant samples were sent to CRCL, New Delhi with the permission of the competent authority to ascertain the composition and nature of the goods. The Joint Director, CRCL, New Delhi after due testing of remnant samples in respect of the Bills of Entry mentioned in the table in Para 1 above filed by the importer has submitted their report vide letter F. No. 27-Cus/C-

21/2022-23 dated 09.09.2022. The Joint Director, CRCL, New Delhi in their above referred test report has opined that the sample meets the requirement of Kerosene (IS: 1459:2018), Kerosene Intermediate (IS:17793:2022) but doesn't meet the requirement of Petroleum Hydrocarbon Solvent (IS:1745:2018) with respect to distillation (Final boiling point). These goods were to be classified under **CTH No. 27101932**, but the same were mis-declared as "Mixed Mineral Hydrocarbon Oil" by declaring wrong classification thereof under **CTH 27101990**.

2.4 Para 2.01 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribed as follow:

"(a) Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed by clicking on 'Downloads' at <http://dgft.gov.in>

(b) Further, there are some items which are 'free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force."

2.5 As per the Schedule I of the Indian Trade Classification (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27, Import Policy for the **Superior Kerosene Oil (SKO)**, as covered under **Customs Tariff Heading and Tariff Item No. 27101910** is "State Trading Enterprises" with remarks that "Import subject to Para 2.20 of the Foreign Trade Policy and condition at Policy condition (2) below."

2.6 Para 2.20 of the Foreign Trade Policy 2015-2020, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 specified as follow:

- 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 authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

2.7 Further to above, the Policy condition (2) prescribed at Schedule I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 is specified as follows:

“(2) Import of SKO shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL, and IBP for all purposes with STC being nominated as State Trading Enterprises (STE) for supplies to Advance Licence Holders. Advance Licence Holders shall however, have the option to import SKO from the above mentioned STEs including STC.”

2.8 The list of the State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2015-2020 is as follow:

“S. No. STATE-TRADING ENTERPRISES

- 1. Food Corporation of India (FCI)*
- 2. State Trading Corporation (STC)*
- 3. Indian Oil corporation (IOC)*
- 4. Bharat Petroleum Corporation Ltd. (BPCL)*
- 5. Hindustan Petroleum Corporation Ltd. (HPCL)*
- 6. Oil and Natural Gas Corporation Ltd. (ONGC)*
- 7. Minerals and Metals Trading Corporation (MMTC)*
- 8. Indian Potash Ltd. (IPL)*
- 9. National Dairy Development Board (NDDB)*
- 10. National Cooperative Dairy Federation (NCDF)*
- 11. National Agriculture Cooperative Marketing Federation of India Ltd (NAFED)*
- 12. Projects and Equipment Cooperation of India Ltd.(PEC)*
- 13. Spices Trading Corporation Limited (STCL)*
- 14. Central Warehousing Corporation (CWC)”*

2.9 Further, since the SKO in the total quantity in possession exceeding the specified quantity falls under the category of “Petroleum Class B” and the import, storage and handling of the products falling under “Petroleum Class B” are governed by the provisions of the Petroleum Act, 1934 (30 of 1934).

As per the Petroleum Act, 1934

"Petroleum Class "B" means petroleum having a flash point of 23° C and above but below 65° C. (e.g. HSD,SKO, MTO etc.)"

"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 of the Act and the Rules made thereunder."

"Petroleum" means any liquid hydro-carbon or mixture of hydro-carbons and any inflammable mixture (liquid, viscous or solid) containing any liquid hydro-carbon;

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:

(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.

[(4A) the importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;*
- (b) The authenticity and validity of any document supporting it; and*
- (c) 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:-

(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 18.12.2023 had already submitted their consent to decide the matter on merits and as per the test results and gave their consent to re-assess the said bill of entry. Therefore, considering the request of the importer and following the principle of natural justice no SCN was issued in the matter.

DISCUSSION AND FINDINGS

5.1 In view of Para 4 above, I note that principles of natural justice have been complied with. The issue to be decided in the present case is that:

- (i) Whether the impugned goods are liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962 & whether goods can be allowed to be re-exported.
- (ii) Whether importer is liable for penalty under Section 112 of the Customs Act, 1962.

5.2 M/s. Lucky Chemicals Corporation, situated at Lucky Heights, 12/3 New Palasiya, Indore, M.P-452003 has filed Bill of Entry No. 7908099 dated 17.03.2022 for import of "Mixed Mineral Hydrocarbon oil" falling under CTH-27101990. However, as per test reports from CRCL, Kandla as well as CRCL, New Delhi, the imported item is 'Kerosene'. As such, by doing this act, the importer has attempted to import Kerosene Oil falling under CTH 27101932 which is a restricted item, by mis-declaring it as "Mixed Mineral Hydrocarbon Oil" and misclassifying it under CTH-27101990.

5.3 In the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. 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 From the facts discussed hereinabove, it appears that the importer had declared the description of the goods as "Mixed Mineral Hydrocarbon oil" classified under CTH 27101990 in the Bill of Entry mentioned in the table in Para 1 whereas they had actually imported the Kerosene Oil falling under CTH No. 27101932 as per the test reports of CRCL, New Delhi as discussed hereinabove in the guise of "Mixed Mineral Hydrocarbon Oil" under CTH No. 27101990 which were restricted for importation. The policy conditions stipulate that;

"import of SKO (Kerosene) is subject to Para 2.20 of Foreign Trade Policy and shall be allowed through State Trading Enterprises (STEs) i.e. IOC, BPCL, HPCL and IBP for all purposes with STC being nominated as a State Trading Enterprise (STE) for supplies to Advance Licence holders. Advance Licence holders shall however, have the option to import SKO from the above mentioned STEs including STC".

Further, the SKO stands classified as "Petroleum Class B". Thus, Goods became liable for confiscation under Section 111 (d) and (m) of the Customs Act,

1962, which I held accordingly.

5.5. 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".

5.6 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. Whereas, in the instant case, the goods have already been re-exported by the importer on provisional basis as discussed above. Therefore, redemption fine under Section 125 of the Customs Act, 1962, appears to be imposable on the importer against redemption of the confiscated goods and the fine may be recovered from encasement of the BG obtained in lieu of re-export of goods on provisional basis.

5.7 I note that competent authority has granted permission to re-export the imported goods, it is but obvious that no benefits have been accrued to the importer as goods have not been cleared for home consumption. Further importer would have borne the extra cost to re-export the impugned goods. This warrants that a lenient view may be taken while quantifying and imposing redemption fine.

5.8. In view of above, it is thus evident that the importer has mis-declared their goods as Mixed Mineral Hydrocarbon Oil which is actually Kerosene. Therefore, the goods imported under above Bill of Entry No.7908099 dated 17.03.2022 of value **Rs.1,02,67,301/- (Rupees One crore two lakhs sixty seven thousand three hundred one only)** are liable for confiscation under Section 111(d) &111(m) and liable for penalty under Section 112 a(i) of the Customs Act, 1962

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. 27101990 of the goods imported vide Bill of Entry No. 7908099 dated 17.03.2022 and order to re-classify the goods under CTH 27101932.

6.2 I order for confiscation of the goods imported vide Bill of Entry No. 7908099 dated 17.03.2022 declared as " Mixed Mineral Hydrocarbon Oil" weighing 181450 kgs having Assessable Value of **Rs.1,02,67,301/- (Rupees One crore two lakhs sixty seven thousand three hundred one only)** under Section 111(d) & (m) of the Customs Act, 1962. However, as the goods have already been exported, I hereby impose redemption fine of Rs. 10,00,000/- (Rs. Ten Lac Only) under Section 125 of the Customs Act, 1962, on the importer against redemption of the confiscated goods.

6.3 I impose a penalty of Rs. 2,27,000/- (Rs. Two Lac Twenty Seven Thousand Only) on the importer M/s. Lucky Chemicals Corporation under Section 112 (a)(i) of the Custom Act, 1962.

6.4 I order to appropriate the Bank Guarantee submitted by the importer against the aforesaid fine and penalty.

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.

Signed by



(Arun Kumar)
Date: 20-05-2024 9.10.1
Additional Commissioner
Import Section, CH Mundra

F. No. CUS/APR/BE/MISC/709/2022-DC/AC-I

Date:

To,

M/s. Lucky Chemicals Corporation,
Address-Lucky Heights,
12/3 New Palasiya,
Indore, M.P-452007

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.