



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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| A | File No. | CUS/APR/BE/SAO/26/2024-Gr 1-O/o Pr Commr-Cus-Mundra |
| B | Order-in-Original No. | MCH/ADC/AK/75/2024-25 |
| C | Passed by | ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra. |
| D | Date of order | 13.06.2024 |
| E | Noticee/Party/ Importer/ Exporter | M/s Shyam Industries, Plot No. 1,2,3,4,5,6,7,8,9, 80, Rajkumar Industrial Estate, Saras Gam, Olpad, Surat, Gujarat 394540 |
| F | DIN No. | 20240671MO0000666FBA |

1. यह अपील 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 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),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, 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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

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, where penalty alone is in dispute.

DIN-20240671MO0000666FBA

Brief facts

M/s Fast Track CFS Private Limited, Plot No. 3, Block-C, Sector-11, APSEZ Ltd., Mundra-370421 has filed a Bill of Entry for warehousing No. 1005461 dated 13.03.2024 (hereinafter referred to as '*the said BE*' for the sake of brevity) for and on behalf of its client M/s Shyam Industries, Plot No. 1,2,3,4,5,6,7,8,9, 80, Rajkumar Industrial Estate, Saras Gam, Olpad, Surat, Gujarat 394540 holding IEC No: AEQFS5017P (hereinafter referred to as '*the importer*' for the sake of brevity), at Mundra SEZ port (INAJM6) for import of items viz. "Industrial Oil" declared under CTH 27101989 (hereinafter referred to as '*the impugned goods*' for the sake of brevity). The concerned Bill of Lading No. KWI0120289 dated 10.02.2024, Invoice No. EPOT Inv-437-2024 dated 02.03.2024. As per the said import documents, the cargo is imported from the shipper M/s EPOT International FZE, UAE. The declared quantity of the imported goods is 180.015 MTS, total assessable value is Rs.1,23,18,658.22/- and total duty is Rs.30,16,839.40/-.

2.1 The goods covered under the said BE were duly assessed and orders to draw the sample was given by the competent authority of the SEZ, Customs Mundra to ascertain the true nature, description and identity of the cargo. Accordingly, during the course of examination, representative samples were drawn by the SEZ customs officers and sent to CRCL Vadodara vide TM No 07/2023-24 dated 02.04.2024 for testing purpose.

2.2 The Chemical Examiner Grade-I, CECL, Vadodara vide Test Report Lab No. RCL/Mundra/IMP/150 dated 10.04.2024 has submitted the report stating that:-

"The sample as received is in the form of light pale yellowish oily liquid. It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant.

Density at 15°C = 0.8317 gm/cm³.

Flash Point (PMCC) = 74.0°C.

K.V. AT 40°C = 3.330cST.

Ash Content = Nil

Water Content = Nil

Sediment content = Nil

Distillation range :- IBP = 169.1°C.

FBP = 365.8°C.

Sulphur Content = 38.918 PPM.

“On the basis of the above tested parameters samples u/r meets the requirements of High Flash High Speed Diesel as per IS 16861:2018”

2.3 On the basis of CECL, Vadodara report dated 10.04.2024, it is found that impugned goods imported vide the said BE are meeting the requirements of High Flash High Speed Diesel as per IS 16861: 2018 and merit classification under CTH-27101949. Such item is restricted and allowed to be imported only through State Trading Enterprise (STE) as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I.

2.4 The impugned goods falls under the category of restricted goods making them liable for confiscation under section 111 read with Section 2(39), section 125 of the Customs Act, 1962, para 2.46 of the FTP 2023 & Rule 18(5) of the SEZ rules 2006 as amended. Therefore, giving reference to the Notification No. GSR 772(E) dated 05.08.2016 amending the Rule 47 of the SEZ Rule 2006, the test reports alongwith all the relevant documents were forwarded to SIIB Section, Custom House Mundra for information and further necessary action in the matter.

2.5 Chapter-2 of the Foreign Trade Policy-2023 (hereinafter referred to as “the FTP-2023” for the sake of brevity) deals with the general provisions governing import and export of goods and services. Para-2.01 of the said chapter reads as under:

“2.01 Policy regarding import / Exports of goods:

(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.

(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.”

2.6 Further, policy provisions mentioned in the Indian Trade Classification (Harmonised System) of Import in the Schedule-1 is binding as per the FTP-2023, Chapter-2 and paragraph-2.02 thereto, which reads as under:

“2.02 Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports:

(a) ITC(HS) is a compilation of codes for all merchandise / goods for export/ import. Goods are classified based on their group or sub-group at 2/4/6/8 digits.

(b) ITC(HS) is aligned at 6-digit level with international Harmonized System goods nomenclature maintained by World Customs Organization (<http://www.wcoomd.org>). However, India maintains national Harmonized System of goods at 8-digit level notified under First Schedule of the Customs Tariff Act, 1975 which may be viewed under ‘Regulatory Updates’ at <http://dgft.gov.in> and at <https://www.cbic.gov.in>

(c) The import/export policies for all goods are indicated against each item as per its ITC (HS). Schedule 1 of ITC (HS) lays down the Import Policy regime while Schedule II of ITC(HS) lays down the Export Policy regime.

(d) Except where it is clearly specified, Schedule 1 of ITC (HS), Import Policy is for new goods and not for Second Hand goods. For Second Hand goods, the Import Policy regime is given under Para 2.31 of this FTP.”

2.7 The relevant policy conditions are being reproduced herein under:

Notification No. 08/2023 dated 29.05.2023

Subject: Syncing of ITC (HS), 2022- Schedule-I (Import Policy) with Finance Act, 2023 (No. 8 of 2023) dated 31.03.2023 and Foreign Trade Policy, 2023-reg.

4. *The List of ITC (HS) specific Policy conditions and chapter specific Policy Conditions under ITC (HS)2022, Schedule-I (Import Policy) amended in sync with Foreign Trade Policy 2023 is annexed herewith (Annexure-III)*

ANNEXURE-III

(Annexure referred to in DGFT Notification No. 08/2023 dated 29.05.2023 regarding 'Indian Trade Classification (Harmonised System) of Import Items, 2022 [ITC (HS), 2022])'

| <i>Chapter</i> | <i>Policy Condition</i> | <i>Existing Condition</i> | <i>Revised Condition</i> |
|----------------|-------------------------|--|---|
| 27 | 5 | <i>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&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date.</i> | <i>Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date</i> |

2.7.1 Further, as per para 4.18 (ii) of the FTP-2023, items reserved for imports by STEs cannot be imported against Advance Authorisation/ DFIA.

2.8 Further, as per Para 2.21 of the FTP-2023, State Trading Enterprises have been defined as under:

Import / Export through State Trading Enterprises:

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

2.9 Further, as per Handbook of Procedures-2023, Imports of Restricted Items are governed by a series of procedures as under:

IMPORT OF RESTRICTED ITEMS:

2.47 Import / Export of Restricted Items:

(a) An application for grant of an Authorisation for import or export of items mentioned as 'Restricted' in ITC (HS) may be made online to DGFT Hqrs in ANF 2M /ANF 2N respectively along with documents prescribed therein.

(b) An application for amendment in import or export Authorisation has to be made online to DGFT Hqrs.

2.48 EXIM Facilitation Committee:

(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT / RA may take assistance and advice of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments / Ministries concerned.

(b) Import/Export authorisations for a restricted item, if so, directed by the competent authority, shall be issued for import/ Export through one of the sea ports or air ports or ICDs or LCS, as per the option indicated, in writing, by the applicant. Authorisation holder shall import at the port

specified in the Authorisation and thereafter all imports against said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port.

(c) EXIM Facilitation Committee (EFC) shall normally meet once every month. Where a case has been deferred in EFC for want of comments from the Technical Authorities and Departments / Ministries concerned but subsequently, NOC(s) has / have been received from the concerned agency(ies) with no divergence in views, authorisation shall be issued with the approval of Chairman, EFC and the case shall be brought before EFC in its subsequent meeting for approval on ex-post facto basis

As per the above provisions of FTP and Hand Book of Procedure, the import of Diesel, being the canalised item is subjected to the conditions imposed thereunder and allowed to be imported through STEs only. Import of Diesel by any other parties is in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods as 'Prohibited' for import into India.

3. As per test result, the impugned goods are "High Flash High Speed Diesel" classifiable under CTH 27101949. Hence, it is observed that importer has mis-classified the subject goods under CTH 27101989 instead of correct and proper CTH 27101949. Further, as per the contemporary data available on NIDB, in respect of the identical goods sold for export to India and imported at or about the same time, rate of CTH 27101949 is ranging from Rs.54.44 to Rs.92.84 per litre. Further, considering the density of the impugned goods (HFHSD) as given by the lab (*Density at 15°C = 0.8317 gm/cm³*), the rates would come to Rs.65.46 (=54.44/0.8317) to Rs.111.63 (=94.84/0.8317) per Kgs (1 Ltr = 0.8317 Kgs).

4 Sub-rule (3) of the said Rule-4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as "*the CVR-2007*" for the sake of brevity) states that, in applying these rules, if more than one transaction value of identical goods is found, the lowest such value, Rs.65.46 per Kgs in the present case shall be used to determine the value of imported goods. However, in the present case the declared rate of the impugned goods is Rs.68.05 per Kgs,

therefore there appears to be no reason to doubt the truth or accuracy of the rate & value declared in relation to the imported goods in view of the provisions of rule-12 of the CVR-2007, which reads as under:

“Rule 12. Rejection of declared value . - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.”

5 . Whereas, the test report clearly states that on the basis of tested parameters sample meets the requirements of High Flash High Speed Diesel as per IS 16861: 2018, merit classification under 27101949 which can be imported by the STE only (State Trading Enterprise –Para 2.21 of FTP 2023) by virtue of policy condition (5) of the Chapter 27. Therefore, it appears that the goods imported under the said BE are liable for confiscation under Section 111(d),111(m) & 111(o) of the Customs Act, 1962.

6. RELEVANT LEGAL PROVISIONS:

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

2. Definitions.—*In this Act, unless the context otherwise requires,—*

.....

(o) **“import”** means—

(i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*

(ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different*

Special Economic Zone;

Section 21: Single enforcement officer or agency for notified offences.—

- 1. The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
- 2. The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*
- 3. Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

Section 22: Investigation, inspection, search or seizure.—

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub-section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

B. RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:

Rule 18(5): *The Units in Free Trade and Warehousing Zones or units in Free Trade and Warehousing Zone set up in other Special Economic Zone, shall be allowed to hold the goods on account of the foreign supplier for dispatches as per the owner's instructions and shall be allowed for trading with or without labeling, packing or repacking without any processing:*

Provided that refrigeration for the purpose of storage and assembly of Completely Knocked Down or Semi Knocked Down kits shall also be allowed by the Free Trade and Warehousing units undertaking the said activities:

Provided further that these Units may also re-sell or re-invoice or re-export the goods imported by them:

Provided also that all transactions by a Unit in Free Trade and Warehousing Zone shall only be in convertible foreign currency;

47(4) *Valuation and assessment of the goods cleared into Domestic*

Tariff Area shall be made in accordance with Customs Act and rules made there under.

47 (5) *Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.*

(C) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): *"goods" includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;*

Section 2(23): *"import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*

Section 2(25): *"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;*

Section 2(26): *"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;*

Section 2 (33) *'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.*

Section 2(39): *"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.*

Section 11A: *“illegal import” means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.*

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.*

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];

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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;

(D) Relevant Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

“Rule 4. Transaction value of identical goods. - (1) (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

.....

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

“Rule 5. Transaction value of similar goods. -(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 12. Rejection of declared value - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in

relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(E) RELEVANT PROVISIONS OF FTP:

Para 2.46 of the FTP 2023

2.46 Import for Export

I.(a) Goods imported, in accordance with FTP, may be exported in same or substantially the same form without an authorisation provided that item to be imported or exported is not in the restricted for import or export in ITC(HS) Schedules.

.....

(e) Notwithstanding the above, goods which are freely importable may be re-exported except items as in the Prohibited or SCOMET List of exports, in same or substantially same form even though such goods are under "Restricted list" for export, subject to the following conditions:

- (i) Goods are not of Indian Origin;*
- ii) Goods imported shall be kept in bonded warehouse under supervision of Customs;*
- (iii) Goods to be exported have never been cleared for home consumption;*
- (iv) Export of goods shall be subjected to Section 69 of Customs Act, 1962.*

7. Show Cause Notice & personal Hearing:-

The importer vide letter dated 21.05.2024 has submitted that, as per test report it appears that the impugned goods imported by them does not meet the declared classification and hence they want to re-export the impugned goods. The importer confirmed that they do not want and personal hearing and show cause notice in the matter; that, they are ready to pay applicable fine and penalty as imposed by the department.

8. DISCUSSION AND FINDINGS

8.1 M/s Fast Track CFS Private Limited, SEZ had filed the said BE for and on behalf of its client /the importer for import of the impugned goods viz. "Industrial Oil" declared under CTH 27101989. Furthermore, the impugned goods have also been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005. The impugned goods samples have been tested at CECL, Vadodara and it is found that imported goods meet the requirements of High Flash High Speed Diesel as per IS 16861:2018.

8.2 From the above discussions and evidences available on record ,I find it evident that a restricted item, i.e. 'High Flash High Speed Diesel' (IS:16861:2018) falling under CTH-27101949 was attempted to be imported vide the said BE by way of mis-declaring the goods as "Industrial Oil" under CTH- 27101989. As per the provisions of FTP and Hand Book of Procedure, the import of High Speed Diesel, being a canalised item is subjected to the conditions imposed thereunder and allowed to be imported through STEs only. Import of High Speed Diesel by any other parties is in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods as 'Prohibited' for import into India. The importer is neither a STE nor has procured this material from the STEs as prescribed under the FTP. Hence, such act of the importer falls under the definition of '*smuggling*' as defined in section 2(39) of the Customs Act, 1962 and the impugned goods appears to be '*smuggled goods*'.

8.3 I find that the importer vide letter dated 21.05.2024 has categorically admitted the facts that the impugned goods does not merit classification as declared by them in the said BE. However, after introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration in all aspects in the Bills of Entry and to pay the correct amount of Duty. In terms of Section 46(4) of the Customs Act, 1962, the importers are required to make a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs duty. Accordingly, it is found that, the importer has attempted to import a canalised item i.e. 'High Flash High Speed Diesel' (IS:16861:2018)

falling under CTH-27101949 by way of mis-declaring the same as Industrial Oil under CTH- 27101989. Such acts of omission and commission renders the impugned goods liable for confiscation under Section 111(d),111(m) & 111(o) of the Customs Act, 1962. The said acts of omission and commission on part of the importer have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962

8.4 Further, M/s Fast Track CFS Pvt. Ltd. has filed the said BE for and on behalf of it's client/the importer and certain observations on the said BE are as under:

8.4.1 Warehouse Bill of Entry (BOE) Filing: A warehouse BOE is typically filed when goods are imported and stored in a bonded warehouse without immediate payment of customs duties. The duties are deferred until the goods are either cleared for domestic consumption or re-exported. The lack of any mention of re-export in the said BE is a critical omission because it sets the stage for how the goods are processed and duties are assessed.

8.4.2 Self-Assessment and Applicable Duties: During the self-assessment process, the importer levied the applicable BCD, which further supports the interpretation that the goods were not intended for re-export. In the case of goods meant for re-export, the BCD would be zero, and this should be explicitly stated. The self-assessment process allows importers to declare the classification and applicable duties on imported goods. By levying the BCD, the importer effectively confirmed that the goods were meant for domestic clearance (DTA) and not re-export.

8.4.3 Importance of Declaration in BOE: It is crucial to declare the purpose of the goods in the import BOE accurately. For re-export purposes, there should be a clear declaration in the BOE, specifying that the goods are not intended for domestic consumption but for re-export. This declaration impacts the duty assessment and compliance with customs regulations. The absence of such a declaration in the said BE suggests that the importer did not intend for the goods to be re-exported.

8.4.5 Review of Submitted Documents: The review of the documents available on record, including the invoice and packing list, reveals that these were issued to the consignee declared as the importer. Additionally,

the Bill of Lading listed the importer as the notify party. These documents are crucial because they establish the parties involved in the transaction and the intended recipient of the goods. When the importer is also the notify party, it generally indicates that the impugned goods are to be received and cleared by the importer for domestic use rather than being re-exported.

8.4.6 Conclusion: DTA Clearance: Based on these facts, it is evident that the SEZ Unit/Importer, although they did not file a DTA BOE, intended for the impugned goods to be cleared for domestic use. The following points support this conclusion:

Warehouse BOE without Re-export Mention: The filing of a warehouse BOE without any mention of re-export indicates the goods were not intended for re-export.

Self-Assessment of BCD: Levied applicable BCD instead of zero duty applicable for re-export purposes.

Invoice and Packing List: Issued to the consignee declared as the importer.

Bill of Lading: Listed the importer as the notify party, further indicating the intention for domestic clearance.

8.4.7 This comprehensive review and analysis of the documentation and declarations provide a clear understanding that the impugned goods were meant for DTA clearance and not re-export, despite the absence of a DTA BOE.

8.5 From the discussion in para supra, it is found that the importer had attempted to import a canalised item, i.e. 'High Flash High Speed Diesel' (IS:16861:2018) falling under CTH-27101949 by way of mis-declaring the same as Industrial Oil under CTH- 27101989, by wilful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act and Rules made thereunder as discussed above with intent to smuggle these goods into India. Accordingly, it is found that, by their acts of omission and commission renders imported goods liable for confiscation under Section 111(d), 111(m) & 111(o) of the Customs Act, 1962. The said

acts of omission and commission on the part of the importer have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

8.6. Whereas, Section 125(1) of the Customs Act, 1962 provides that:

"Whenever confiscation of any goods is authorized 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".

8.7. 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 these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation for re- export of the said goods.

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

Order

9.1 I reject the declared description of 'Industrial Oil' and declared classification under CTH-27101989 of goods imported vide SEZ warehouse Bill of Entry No. 1005461 dated 13.03.2024 and order to classify the imported goods under CTH-27101949 with description as 'High Flash High Speed Diesel' (IS:16861:2018) under Section 17 of the Customs Act, 1962 for the purpose of re-export only.

9.2. I order for confiscation of the goods imported vide SEZ warehouse Bill of Entry No. 1005461 dated 13.03.2024 declared as "Industrial Oil" having declared weight 180.015 MTS and declared value of Rs.1,23,18,658.22 under Section 111 (d), 111 (m) & 111(o) of Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods for re-export on payment of redemption fine of Rs.10,00,000/- (Rs. Ten Lakh Only) under Section 125 of the Customs Act, 1962.

9.3 I impose a penalty of Rs. 1,00,000/- (Rs. One Lakh Only) on the importer M/s. Shyam Industries under Section 112 (a)(i) of the Custom Act, 1962.

9.4 I also allow the importer to re-export the subject goods imported vide SEZ warehouse Bill of Entry No. 1005461 dated 13.03.2024 declared as "Industrial Oil" having declared weight 180.015 MTS and declared value of Rs.1,23,18,658.22/- back to the overseas supplier with condition to pay all applicable fine & penalty imposed herein. Further, as per section 125 of the Customs Act, 1962, if the importer does not pay the fine within a period of one hundred and twenty days from the date of the order, option to redeem the said goods shall become void, unless an appeal against the said order is pending and the said impugned goods would be liable for disposal as per instructions and guidelines in CBIC Disposal Manual, 2019. The cost of destruction shall be borne by the importer.

10. 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

(Arun Kumar)
Date: 13-06-2024 18:55:50
Additional Commissioner

Import Section, CH Mundra

To,

1. M/s Shyam Industries,
Plot No. 1,2,3,4,5,6,7,8,9, 80,
Rajkumar Industrial Estate, Saras Gam,
Olpad, Surat, Gujarat 394540

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.