



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS**  
**CUSTOM HOUSE: MUNDRA, KUTCH**  
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A	File No.	CUS/APR/BE/SAO/43/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	<b>MCH/ADC/AK/111/2024-25</b>
C	Passed by	<b>ARUN KUMAR</b> Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	25.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s Naksh Trading Co. (HUF) Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001
F	DIN No.	<b>20240771MO00007707DD</b>

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियम 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, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
Having his office at 4<sup>th</sup> 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 ड्रूटि/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

## BRIEF FACTS OF THE CASE:

M/s Naksh Trading Co. (HUF) situated at Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001 ('Importer' for the sake of brevity) have filed Bill of Entry No. 2050456 dated 08.02.2024 for import of purportedly said to be Base Oil- CTH-27101971. On the basis of input received from the Directorate General of Intelligence (DRI), Surat Regional Unit vide letter dated 12.02.2024 to the effect that the imported consignment may have some suspicious item, total 10 containers imported vide BL No. MEDUKW341888 dated 25.01.2024 and BE No. 2050456 dated 08.02.2024 said to have Base Oil were kept on hold for examination and further inquiry by the SIIB Section, Custom House, Mundra.

### 2. INVESTIGATION AS PER IR- 56/2024 dated 15.07.2024:

2.1 The consignment covered under impugned Bill of Entry was examined on 20.02.2024 at the Hind CFS in presence of authorised representative of CB firm during the examination 04 representative samples were drawn to ascertain the exact composition of the imported goods declared as Base Oil and forwarded to the CRCL, Vadodara vide Test Memo No. 882 to 885 all dated 23.02.2024.

2.2 The CRCL, Vadodara vide their reports dated 13.03.2024 has submitted the chemical analysis of the samples as under:

**TABLE-1**

#### 1. Test Memo No. 882 dated 08.02.2024

**Container No.** BMOU2005421, MSDU1923980, CAXU3114443

*It is composed of mixture of hydrocarbon oil more than 70% by weight.*

<b>Density at 15°C</b>	0.8247 gm/cm <sup>3</sup>
<b>Flash Point</b>	<b>55°C</b>
<i>Kinematic Viscosity at 40°C</i>	2.264 CST
<i>Ash Content</i>	<i>Nil</i>
<i>Water Content</i>	<i>Nil</i>
<i>Sediment content</i>	<i>Nil</i>
<i>Distillation range IBP</i>	<i>183.0°C</i>
<i>FBP</i>	<i>312.1°C</i>
<i>Sulphur Content %</i>	<i>163.6ppm</i>

*The sample u/r does not meet the requirement of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), Kerosene (IS:1459:2018, IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automotive diesel fuel (IS:1460:2017), HFHSD (IS: 16861:2018), transformer oil, biodiesel, diesel fuel blend B6-B20 (IS:16531:2016), Gas Oil (IS: 17789:2022), vacuum gas Oil (IS:17792:2022), Kerosene Intermediate (IS:17793:2022).*

#### 2. Test Memo No. 883 dated 08.02.2024

**Container No.** TTNU3134526, TGBU3167487, MEDU2949679

*It is composed of mixture of hydrocarbon oil more than 70% by weight.*

<b>Density at 15°C</b>	0.8171gm/cm3
<b>Flash Point</b>	<b>40°C</b>
<b>Kinematic Viscosity at 40°C</b>	1.695 cst
<b>Ash Content</b>	Nil
<b>Water Content</b>	Nil
<b>Sediment content</b>	Nil
<b>Distillation range IBP</b>	155.8°C
<b>FBP</b>	307.3°C
<b>Sulphur Content %</b>	30.68ppm

*The sample u/r does not meet the requirement of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), Kerosene (IS:1459:2018, IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automotive diesel fuel (IS:1460:2017), HFHSD (IS: 16861:2018), transformer oil, biodiesel, diesel fuel blend B6-B20 (IS:16531:2016), Gas Oil (IS: 17789:2022), vacuum gas Oil (IS:17792:2022), Kerosene Intermediate (IS:17793:2022).*

### **3. Test Memo No. 884 dated 08.02.2024**

**Container No.** CAIU2518290, TLLU3305289

*It is composed of mixture of hydrocarbon oil more than 70% by weight.*

<b>Density at 15°C</b>	0.8225 gm/cm2
<b>Flash Point</b>	<b>47.5°C</b>
<b>Kinematic Viscosity at 40°C</b>	2.156 cst
<b>Kinematic Viscosity at 100°C</b>	1.283 cst
<b>Ash Content</b>	Nil
<b>Water Content</b>	Nil
<b>Sediment content</b>	Nil
<b>Distillation range- IBP</b>	168.3°C
<b>95.0% distilled at</b>	305.1°C
<b>Sulphur Content %</b>	29.15 ppm

*On the basis of above analytical finding reveal that sample u/r meets the requirement of Automotive Diesel Fuel (IS: 1460:2017)*

### **4. Test Memo No. 885 dated 08.02.2024**

**Container No.** FBIU0382323, MEDU2217929

*It is composed of mixture of hydrocarbon oil more than 70% by weight.*

<b>Density at 15°C</b>	0.8056 gm/cm <sup>2</sup>
<b>Flash Point</b>	<b>52.5°C</b>
<i>Kinematic Viscosity at 40°C</i>	2.107 cst
<i>Ash Content</i>	<i>Nil</i>
<i>Water Content</i>	<i>Nil</i>
<i>Sediment content</i>	<i>Nil</i>
<i>Distillation range IBP</i>	<i>174.2°C</i>
<i>FBP</i>	<i>298.0°C</i>
<i>Sulphur Content %</i>	<i>42.56°C</i>

*On the basis of above analytical finding reveal that sample u/r meets the requirement of automotive diesel fuel (IS: 1460:2017)*

2.3.1. From above test reports, it appears that in case of TM No. 882 & 883, the samples (total 6 containers- two samples) do not testify the merit of Base Oil (as declared in the BE) so far as Flash Point of the sample is concerned. As per the IS 18722 (Part-1) 2024, the flash point of the Base Oil falls within the range of 150 °C to 290 °C depending upon the category of the Base oil.

2.3.2. On the basis of test reports, it appears that the imported goods, found as mixture of hydrocarbon oil more than 70% by weight is more appropriately classifiable under CTH-27101990 as under:

**2710 - Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing bio-diesel and other than waste oil."**

**271019 -- Other**

**27101990 --Other**

2.3.3 Thus, in view of the above, it appears that imported item vide above said 6 containers in guise of Base Oil is Mix Hydrocarbon Oil (MHO) classifiable under CTH-27101990 falling under **Class B Petroleum product** as per Petroleum Act, 1934 and for import of the same license from the PESO is required. However, from the documents uploaded in e-sanchit, no such license is found uploaded by the importer.

2.4.1. Further, in case of TM No. 884 & 885 (total 4 containers- two samples), the sample does not testify the merit of Base Oil (as declared in the BE) but the Automotive Diesel fuel (IS: 1460:2017) classifiable under CTH- 27101944 which is a restricted item and allowed to be imported through State Trading Enterprise (STE) as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I.

The relevant policy conditions are being reproduced hereinunder:

**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]]'**

<b>Chapter</b>	<b>Policy Condition</b>	<b>Existing Condition</b>	<b>Revised Condition</b>
27	5	<p>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&amp;NGs Resolution No. P23015/1/2001-MKT.</p> <p>Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date.</p>	<p>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&amp;NGs Resolution No. P23015/1/2001-MKT.</p> <p>Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing transportation fuels before this date.</p>

2.4.2. 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.*

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

2.4.4 Further, as per Handbook of Procedures-2023, Import 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 Kerosene, being the canalised item is subjected to the conditions imposed thereunder and allowed to be imported through STEs only. Import of Kerosene 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 '**Restricted**' for import into India.

2.4.5 The 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.

3.1 The above test reports have been disclosed to the importer and the CB vide email dated 19.03.2024. In response, the importer vide email dated 03.04.2024 has requested for resampling and retesting of the samples. Further, vide email dated 06.04.2024, the importer has requested for condonation of delay in request for resampling within stipulated time and requested to consider their request for resampling and retesting of the imported goods. The request for resampling and resting was approved by the competent authority. Meanwhile, the importer vide letter dated 22.05.2024, the importer has submitted that as there was discrepancy between declared goods and the test results and their supplier has also accepted the results and accordingly, they also accept the results of the CRCL, Vadodara and requested for re-export of the goods. The importer has also submitted that they are ready to comply with all necessary penalty proceedings for the same.

3.2 Thus, from the above it appears that the imported cargo covered under BE No. 2050456 dated 08.02.2024 (total 10 containers) is found mis declared in as much as the test reports received from the CRCL, Vadodara testifies a part of imported cargo as 'Mixed Hydrocarbon Oil' (in 6 containers- total 114.18 MTs) and remaining part as 'Automotive Diesel Fuel-IS: 1460:2017/HSN-27102010' (in 4 containers- Total 75.695 MTs) falling under CTH-27101944 which is a restricted item and allowed to be imported through **State Trading Enterprise (STE) as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I**. Accordingly, the entire cargo of BE No. 2050456 dated 08.02.2024 was found liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962 and hence placed under seizure under Section 110 of the Act, ibid vide seizure memo dated 10.06.2024 and handed over to the custodian of HIND CFS, APSEZ for safe custody vide Surpurnama dated 10.06.2024. The detail of the container seized as under:

**TABLE-2**

<b>Sr. No.</b>	<b>Container No. (import)</b>	<b>Shifted to Domestic container</b>	<b>ISO Tank</b>	<b>Description of the item as per CRCL report</b>
1	BMOU2005451	TSAU2702040		Mixed Hydrocarbon Oil
2	CAIU2518290	TCKU1637308		Automotive Diesel Fuel-IS: 1460:2017
3	CAXU3114443	TCKU1635199		Mixed Hydrocarbon Oil
4	FBIU0382323	CLHU3329239		Automotive Diesel Fuel-IS: 1460:2017
5	MEDU2217929	TGHU1238813		Automotive Diesel Fuel-IS: 1460:2017
6	MEDU2949679	TTNU3093129	GRMU9110497	Mixed Hydrocarbon Oil
7	MSDU1923980	FCIU3622625		Mixed Hydrocarbon Oil

8	TGBU3167487	GESU3689789		Mixed Hydrocarbon Oil
9	TLLU3305289	GESU3269317	GRMU9210048	Automotive Diesel Fuel-IS: 1460:2017
10	TTNU3134526	HESU3345016		Mixed Hydrocarbon Oil

- As informed by the CFS and CHA representative, Cargo of container no MEDU2949679 shifted to domestic container no TTNU3093129 and further due to leakage, complete cargo shifted to container no GRMU9110497.
- As informed by the CFS and CHA representative, cargo of container no TLLU3305289 shifted to GESU3269317 and further due to leakage half cargo of container no GESU3269317 shifted to GRMU9210048.

3.3 Incident report in the prescribed format as per Annexure-II of the Board's Instruction No. 02/2024-Customs Dated 15.02.2024 has been issued in the matter on 21.06.2024.

3.4. A statement of Shri Rakesh Shivaji More, Karta of M/s Naksh Trading Co. (HUF) has been recorded on 06.07.2024, wherein he has inter-alia stated as under:

- The firm, M/s Naksh Trading Co. was established this firm in December, 2023 for trading of Petroleum Products.*
- M/s Naksh has two GSTIN registration, (i) 22AAYHR9652R1ZU w.e.f. 19.01.2024 having principal place of business at Ground Floor, Block No 15, Gore Parivar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001 and (ii) 27AAYHR9652R1ZK having principal place of business at R No. HW 2679, F R Dmello Chawl, Kotwadi TPS VI P. M. Road, Santacruz, West, Mumbai.*
- They have imported two consignments of Base Oil at Mundra Port from UAE and filed Bill of Entry No. 2090714 dated 10.02.2024 and 2050456 dated 08.02.2024 etc. These are their first import which have been kept on hold by the SIIB, Customs House, Mundra.*
- They have procured the consignment of Base Oil on high sea sale basis from M/s Sidharth Trading, 214, 2<sup>nd</sup> Floor, Millan Shopping Centre, Millan Subway Road, Santacruz West, Mumbai-400054 and filed BE No. 2050456 dated 08.02.2024.*
- They do not have chemical analysis reports of the above consignments as the same has not been provided by the supplier.*
- He was agreed with the examination report and drawl of samples from the consignments. He was also agreeing with the test reports received from the CRCL, Vadodara.*
- After getting information about the test result of the samples of the imported consignment vide Bill of Entry No. 2050456 dated 08.02.2024, initially they requested for re-sampling and re-testing of the consignment but later on, on clarification received from the supplier, they have accepted the test results vide letter dated 22.05.2024 and*

*requested to allow for the re-export of the entire consignment of the above BE.*

- *They are also ready to pay applicable fine and penalty as per the Customs law in this matter.*
- *Since it was their first importing consignment, they were not aware about the actual detail of the consignment. It was only when the test reports were shown to them, they came to know that the goods were not Base Oil, they were supposed to purchase. Therefore, without going into any legal formalities, they have decided to re-export the entire consignment of BE No. Bill of Entry No. 2050456 dated 08.02.2024.*

#### **4. LEGAL PROVISIONS:**

4.1 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.*

4.2 As per 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;*

4 . 3 **SECTION 46** of the Act, prescribes that 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, and such other documents relating to the imported goods as may be prescribed.

4.4. Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

The following goods brought from a place outside India shall be liable for 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.*

4.5 Further, **Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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 not 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.

4.6. **SECTION 124** prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

*No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –*

- a. is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- b. is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

**Provided** that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

**Provided** further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

## 5. OUTCOME OF THE INVESTIGATION:

5.1 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.

5.2 Thus, from the above discussion, it appears that the imported cargo covered under BE No. 2050456 dated 08.02.2024 (total 10 containers) and declared as Base Oil (CTH-27101971) is found mis declared and misclassified in as much as that the test reports received from the CRCL, Vadodara testifies

- i. a part of imported cargo as 'Mixed Hydrocarbon Oil' (in 6 containers- total 114.18 MTs, as per Table-2 above) falling under **Class B Petroleum product** as per Petroleum Act, 1934 and for import of the same license from the PESO is required. However, from the documents uploaded in e-sanchit, no such license is found uploaded by the importer.
- ii. Remaining part of the imported cargo as 'Automotive Diesel Fuel-IS: 1460:2017/HSN-27102010' (in 4 containers- Total 75.695 MTs, as per Table-2 above) falling under CTH-27101944 which is a restricted item and allowed to be imported through **State Trading Enterprise (STE) only as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I**. Import of Kerosene 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.

5.3. The proprietor of the importer firm, in his statement recorded and

letters submitted during the investigation has categorically admitted the facts that the imported material is 'Mixed Hydrocarbon Oil' and 'Automotive Diesel Fuel-IS: 1460:2017'. The importer has attempted to import a canalised item by way of mis declaring the same as Base Oil and thus, by their acts of omission and commission renders imported goods having declared value of Rs. 77,60,556/- liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

5.4 From the discussion in para supra, it appears that the importer, M/s Naksh Trading Co. (HUF) has attempted to import restricted items like 'Mixed Hydrocarbon Oil' and canalised item, 'Automotive Diesel Fuel-IS: 1460:2017' in guise of Base Oil, 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. The said acts of omission and commission on the part of the M/s Naksh Trading Co. (HUF) have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

#### **6. REQUEST FOR RE-EXPORT AND WAIVER OF NOTICE AND PERSONAL HEARING:-**

The importer vide letter dated 22.05.2024 and in his statement recorded on 06.07.2024 has accepted the results of the CRCL, Vadodara and requested for re-export of the entire consignment imported vide Bill of Entry No. 2050456 dated 08.02.2024. The importer has also submitted that they are ready to comply with all necessary penalty proceedings for the same without any legal formalities. Further, the importer vide letter dated 06.07.2024 has submitted that they do not want any PH and SCN and ready to pay the applicable fine and penalty.

7. In view of the above, it appears that:-

- i. The declared description of 'Base Oil' and declared classification under CTH-27101971 of the goods imported vide BE No. 2050456 dated 08.02.2024 is liable to be rejected and to be held as (i) Mixed Hydrocarbon Oil-CTH-27101990 (in 6 containers- total 114.18 MTs, as per Table-2 above) and (ii) 'Automotive Diesel Fuel-IS: 1460:2017'- CTH-27101994' (in 4 containers- Total 75.695 MTs, as per Table-2 above) as testified by the CRCL, Vadodara and admitted by the importer.
- ii. The Imported item, (i) Mixed Hydrocarbon Oil-CTH-27101990 (in 6 containers- total 114.18 MTs, as per Table-2 above) and (ii) 'Automotive Diesel Fuel-IS: 1460:2017'- CTH-27101994' (in 4 containers- Total 75.695 MTs, as per Table-2 above) having total declared value of Rs. 77,60,556/- mis declared as Base Oil covered under above said BE is liable to confiscation under Section 111 (d) & (m) of Customs Act, 1962.
- iii. Penalty under Section 112 (a) (i) & (ii) of the Customs Act, 1962 is imposable upon the importer.

#### **DISCUSSION AND FINDINGS**

8. M/s Naksh Trading Co. (HUF) situated at Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur,

Chattisgarh-492001 ('Importer' for the sake of brevity) have filed Bill of Entry No. 2050456 dated 08.02.2024 for import of purportedly said to be Base Oil- CTH-27101971. On the basis of input received from the Directorate General of Intelligence (DRI), Surat Regional Unit vide letter dated 12.02.2024 to the effect that the imported consignment may have some suspicious item, total 10 containers imported vide BL No. MEDUKW341888 dated 25.01.2024 and BE No. 2050456 dated 08.02.2024 said to have Base Oil were kept on hold for examination and further inquiry by the SIIB Section, Custom House, Mundra.

8.1 I find that the importer vide letter dated 22.05.2024 and in his statement recorded on 06.07.2024 has accepted the results of the CRCL, Vadodara and requested for re-export of the entire consignment imported vide Bill of Entry No. 2050456 dated 08.02.2024. The importer has also submitted that they are ready to comply with all necessary penalty proceedings for the same without any legal formalities. Further, the importer vide letter dated 06.07.2024 has submitted that they do not want any PH and SCN and ready to pay the applicable fine and penalty. I find that the principle of natural justice is being followed and SCN & PH has been waived off as per the request of the importer, hence, I take up the issue for adjudication on the basis of facts available on record.

8.2. 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. In the instant case, I find that in his statement and letters submitted during the investigation has categorically admitted the facts that the imported material is 'Mixed Hydrocarbon Oil' and 'Automotive Diesel Fuel-IS: 1460:2017'. The importer has attempted to import a canalised item by way of mis declaring the same as Base Oil and thus, by their acts of omission and commission renders imported goods having declared value of Rs. 77,60,556/- liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

8.3. From the discussion in para supra, it appears that the importer, M/s Naksh Trading Co. (HUF) has attempted to import restricted items like 'Mixed Hydrocarbon Oil' and canalized item, 'Automotive Diesel Fuel-IS: 1460:2017' in guise of Base Oil, 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. The said acts of omission and commission on the part of the M/s Naksh Trading Co. (HUF) have rendered themselves liable for penalty under the provisions of Section 112(a)(i) of the Customs Act, 1962. I do not intend to penalize the importer under section 112(a)(ii) of the Customs Act, 1962 for the reason that goods are being re-exported having no duty implication.

9.1. I find that the importer vide letter dated 22.05.2024 and in his

statement recorded on 06.07.2024 has requested to re-export of the goods. I find that the option of re-export can be availed by the Importer after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962. 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".*

9.4. 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 and request of the importer for re-export of the goods, I find it appropriate to grant an option to pay redemption fine in lieu of confiscation of the subject with condition to re-export of the said goods back to their overseas supplier.

9.5. I further find that in the instant case as the importer has requested to re-export of the goods and the goods are not being cleared for home consumption, hence, as such the import of the confiscated goods has not been completed for home consumption and the importer is not getting the goods for sale in domestic market to earn any profit and on the other hand they have to bear the expenses for the re-export. However, as the goods are prohibited in nature and as discussed in above paras therefore, I hold that the redemption fine should be imposed on the subject confiscated goods for the purpose of re-export.

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

#### ORDER

10.1 I order to reject the declared description of 'Base Oil' and declared classification under CTH-27101971 of the goods imported vide BE No. 2050456 dated 08.02.2024 and order to re-classify the goods as (i) Mixed Hydrocarbon Oil-CTH-27101990 (in 6 containers- total 114.18 MTs, as per Table-2 above) and (ii) 'Automotive Diesel Fuel-IS: 1460:2017'- CTH-27101994' (in 4 containers- Total 75.695 MTs, as per Table-2 above" .

10.2. I order for confiscation of the Imported item, (i) Mixed Hydrocarbon Oil-CTH-27101990 (in 6 containers- total 114.18 MTs, as per Table-2 above) and (ii) 'Automotive Diesel Fuel-IS: 1460:2017'- CTH-27101994' (in 4 containers- Total 75.695 MTs, as per Table-2 above) having total declared value of Rs. 77,60,556/- mis declared as Base Oil covered under above said BE is liable to confiscation under Section 111 (d) & Section

111(m) of Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs.7,00,000/- (Rs. Seven Lakh only) under Section 125 of the Customs Act, 1962 only for re-export to the overseas supplier.

10.3 I impose a penalty of Rs. 3,00,000/- (Rs. Three Lakh Only) on the importer under Section 112 (a)(i) of the Custom Act, 1962.

10.4 I also allow the importer to re-export the Imported item, (i) Mixed Hydrocarbon Oil-CTH-27101990 (in 6 containers- total 114.18 MTs, as per Table-2 above) and (ii) 'Automotive Diesel Fuel-IS: 1460:2017'- CTH27101994' (in 4 containers- Total 75.695 MTs, as per Table-2 above) having total declared value of Rs. 77,60,556/- mis declared as Base Oil covered under above said BE, 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.

11. 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.

  
(Arun Kumar)  
25/07/2024

Additional Commissioner  
Import Section, CH Mundra

To,

M/s. Naksh Trading Co. (HUF),  
Ground Floor, Block No. 15,  
Gore Parisar, Taj Bhawan Road, Near Raj Bhawan,  
Civil Lines, Raipur, Chattisgarh-492001

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

Mundra.

4. The Deputy Commissioner of Customs (SIIB), Custom House, Mundra.
5. The Manager, Concerned CFS, MP & SEZ, Mundra
6. Guard File.