



**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/MISC/3800/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/35/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	08.05.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Bharat Chemical Products, E-12, Udyog Kunjadhyatmik Nagar, Dasna-201015
F	DIN No.	DIN – 20240571MO000000BE3E

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),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, 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 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.

DIN-20240571MO000000BE3E

Brief Facts

M/s. Bharat Chemical Products, E-12, Udyog Kunjadhyatmik Nagar, Dasna-201015 (IEC-0508072255) (hereinafter referred to as 'the importer' for the sake of brevity) has filed BE No. 9925324 dated 31.01.2024 for import of 125.775 MTS of 'Fuel Oil' valued at Rs. 3623752/- declaring the said goods under CTH-27101990.

The details of the goods declared in the Bill of Entry are as under:-

(Amount in Rs.)

Bill of Entry No. & Date	Description of Goods declared	Qty. in Kgs.	Assessable Value	Duty payable declared
9925324 dated 31.01.2024	Fuel Oil (CTH-27101990)	125775/-	3623752/-	887457/-

2.1 Whereas, the said BE was under assessment in Faceless Assessment Group (FAG); wherein, the FAG officers have given first check for the consignment covered under the said BE. In compliance of the first check examination, the Docks Officer in presence of the Customs Broker's representative has examined the cargo and drawn Representative Sample vide Test Memo No. 1202669 dated 03.02.2024 and representative samples have been sent to CECL, Vadodara under for testing purpose to confirm following;

“Nature, Composition, Description of Goods, Initial Boiling Point, Final Boiling Point, Content of Base Oil, % of Volume (Including LOSS0029), Flash Point, Cetane Index, Sulphur Content, Density, KV@40 degree C and KV@100 degree C, Water Content, Sediment and Ash Content, Other than Transformer Oil, Base Oil or otherwise, Solvents 60/80, 50/120, 145/205, 125/240 (IS 91475/IS 1745), Hazardous Waste (IS: 1459/1571), Hazardous Waste Intermediate (IS 17793), Gas Oil (IS 17789:2022), Vacuum Gas oil (IS 17792:2022), LDO (IS 15770:2008), Automotive diesel fuel not containing Bio Diesel (IS 1460:2017), Diesel Blend (IS 16531:2016), HFHSD FUEL (IS 16861:2018).

2.2. The Chemical Examiner Gr-II, CECL, Vadodara vide Lab No. RCL/Mundra/Imp/6710/28.03.2024 has submitted his report as under;

“The Sample as received is in the form of blackish brown Oily Liquid.

It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant.

<i>Density at 15°C</i>	<i>= 0.907 g/ml</i>
<i>Flash Point by COC</i>	<i>= 119 °C</i>
<i>Kinematics Viscosity at 50 °C</i>	<i>= 59.028 Cst</i>
<i>Ash Content</i>	<i>= 0.69%</i>
<i>Water Content</i>	<i>= 4.0%</i>
<i>Sediment Content</i>	<i>= 0.44%</i>
<i>Acidity (inorganic)</i>	<i>= NIL</i>
<i>Gross Calorific Value (GCV)</i>	<i>= 10787 k.cal/kg</i>
<i>Sulphur %</i>	<i>= 1.914%</i>
<i>PCBs, mg/Kg</i>	<i>= 0.121</i>
<i>PAHs, Percentage</i>	<i>= 0.0002</i>
<i>Lead Content, PPM</i>	<i>= 23.459</i>
<i>Arsenic Content, PPM</i>	<i>= Not detected</i>
<i>Cadmium + Chromium + Nickel, PPM</i>	<i>= 33.855</i>

Above tested parameters sample u/r does not meet the requirement of fuel oil IS: 1593:2018 in respect of Ash content, Sediment content and Water content. It is off specification fuel oil/waste oil. The sample was further tested as per Circular 33/2001-Cus dated 04th June 2001. It is Hazardous Waste.

2.3. From the above report CECL, Vadodara, it is found that the goods are other than that declared by the importer in Bill of Entry. The Chemical Examiner, CECL Vadodara in his report has given conclusion that goods are Hazardous Waste. Therefore, the imported cargo merits classification under CTH No. 27109900, whereas, the same were mis-declared and mis-classified as “Fuel Oil” by declaring wrong classification thereof under CTH 27101990

3.1. Whereas, the import of the waste is governed by the Hazardous and Other Waste (Management and Trans boundary Movement) Rules, 2016;

3.2. As per definition given a Rule 3(39) in part-I of Notification dated 04.04.2016 Issued by the Ministry of Environment, Forest and Climate

Change notified as "The Hazardous and other waste (Management and Transboundary) Rules 2016 'Waste Oil means any oil which includes spills of crude oil, emulsions, tank bottom sludge and slop oil generated from petroleum refiners, installations or ships and can be used as fuel in furnaces for energy recovery, if it meets the specifications laid down in Part-B of Scheduled V of "The Hazardous and other waste (Management and Transboundary) Rules 2016".

3.3. Waste oil is covered under Schedule IV under Rule 6(1) (ii) and 6(2) of Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 issued by the Ministry of Environment, Forest and Climate Change. The waste oil figures at Sr. No. 20 of the Schedule IV of the listed recyclable hazardous wastes which is reproduced below:

SCHEDULE IV

[See rules 6(1) (ii) and 6(2)]

List of commonly recyclable hazardous wastes

S.No.	Wastes
(1)	(2)
20	Used oil and waste oil

3.4. Import of Waste oil is restricted as authorization of Central or State Pollution Control Board or Registration under the provisions of Hazardous and other waste (Management and Transboundary) Rules 2016 is required.

3.5. In view of the above, the imported Off Specification Fuel Oil / Waste Oil, which is hazardous in nature, weighing at 1,25,775 Kgs and having declared assessable valued at Rs. 36,23,752/- appear classifiable under Custom Tariff item 27109900 and is imported in violation of the provisions of Hazardous and other waste (Management and Transboundary) Rules 2016 read with the provisions of Section 11 of the Customs Act, 1962 and hence appear liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962. The importer for such acts of commission/ omission also appear liable for penalty under Section 112 (a) (i) of the Customs Act. 1962.

3.5. From the above, it appears that the impugned goods i.e. Hazardous Waste properly classifiable under CTH 27109900 are restricted in nature as per the Hazardous and Other Waste (Management and Trans boundary Movement) Rules, 2016 and have been imported by the said importer by mis-declaring and mis-classifying the same as 'Fuel Oil' under CTH-27101990.

4. As discussed above, as the goods are restricted for import; hence, the subject goods appeared prohibited in nature and the consignment

covered under the said Bill of Entry appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962.

5. Whereas, from the above it appears that, the importer had mis-declared the description of the goods and the CTH as “Fuel Oil”– under CTH “27101990” imported vide Bill of Entry No. 9925324 dated 31.01.2024 and imported restricted/prohibited goods i.e. “Hazardous Waste” properly classifiable under CTH 27109900.

6. Whereas, in view of the above, it appears that, the goods imported vide Bill of Entry no. 9925324 dated 31.01.2024 appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962 and the importer appeared to be liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

7. Relevant Legal Provisions:

7.1 *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.

7.2. *Section 17. Assessment of duty. –*

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

7.3 *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.]*

7.4. *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;

7.5. *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 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.*

SHOW CAUSE NOTICE & PERSONAL HEARING

8. The importer vide letter dated 24.04.2024 has requested to adjudicate the matter for re-export as they failed to make re-testing request within due time as per rule. Therefore, considering the request of the importer and following the principle of natural justice no SCN is issued in the matter.

DISCUSSION AND FINDINGS

9. M/s. Bharat Chemical Products, E-12, Udyog Kunj Adhyatmik Nagar, Dasna Dasna 201015, 370421 has imported "Hazardous Waste Oil" under Chapter 27109900" vide Bill of entry no. 9925324 dated 31.01.2024

by mis-classifying the same as 'Fuel Oil' and mis-declaring CTH as 27101990.

9.1. I find that the importer had filed the bill of entry with incorrect particulars by mis-declaring the description as Mixed Hydrocarbon Oil and CTH as 27101990; whereas, under first check examination the goods covered under the subject cargo found to be "Hazardous Waste Oil" under Chapter 27109900". The importer has approached this office with request to adjudicate the case for re-import of goods therefore, I find that the principle of natural justice being followed.

9.2. I find that 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. In the instant case, goods are restricted for import as per Hazardous and other waste (Management and Transboundary) Rules 2016; hence, the subject goods appeared prohibited in nature and the consignment covered under the said Bill of Entry appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962. Therefore, the imported goods are required to be re-classified under CTH-27109900 and the goods having Assessable Value of Rs. 36,23,752/-(Thirty Six Lakh Twenty Three Thousand Seven Hundred Fifty Two Only) are liable for confiscation under Section 111(d) & 111 (m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112 a(i) of Customs Act 1962.

9.3. I find that the importer vide letter dated 24.04.2024 has requested to re-export of the goods to their overseas supplier. 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, I find it appropriate to grant an option to pay fine in lieu of confiscation for re-export of the said goods.

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, therefore, I hold that the importer rendered themselves for penal action and also 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

1. I order to reject the declared classification i.e. 27101990 of the goods imported vide Bill of Entry No. 9925324 dated 31.01.2024 and I order to classify the goods under CTH 27109900.
2. I order for confiscation of the goods imported vide Bill of Entry No. 9925324 dated 31.01.2024 declared as "Fuel Oil" weighing 125775 Kgs having Assessable Value of Rs. 36,23,752/-(Thirty Six Lakh Twenty Three Thousand Seven Hundred Fifty Two Only) under Section 111(d) & Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem and re-export the confiscated

goods on payment of redemption fine of Rs. 4,50,000/- (Rs. Four Lac Fifty Thousand Only) under Section 125 of the Customs Act, 1962.

3. I impose a penalty of Rs. 2,25,000/- (Rs. Two Lac Twenty Five Thousand Only) on the said importer under Section 112 (a)(i) of the Custom Act, 1962.
4. I also allow the importer to re-export the subject goods imported vide BE No. 9925324 dated 31.01.2024 declared as "Fuel Oil" weighing 125775 Kgs having Assessable Value of Rs. 36,23,752/-, 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.

Signed by

Arun Kumar

Date: 08-05-2024 16:15:07 (Arun Kumar)
Additional Commissioner

Import Section, CH Mundra

DIN:

To,
M/s. Bharat Chemical Products,
E-12, Udyog Kunjadhyatmik Nagar,
Dasna-201015

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. The Manager, Concerned CFS, MP & SEZ, Mundra
5. Guard File.