



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
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A	File No.	CUS/APR/BE/MISC/632/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/51/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	26.05.2023
E	Date of Issue	26.05.2023
F	SCN No. & Date	Importer has requested for waiver of SCN/PH vide letter dated 22.05.2023
G	Noticee/Party/ Importer/ Exporter	M/s. N K Fibers, Binjhola Mod, Gohana Road, Panipat, Haryana-132103
H	DIN No.	20230571MO0000999B11

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 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),
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 ड्रूटि/ 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 alone is in dispute.

BRIEF FACTS OF THE CASE

M/s N K Fibers (BZPPM6452D), (hereinafter referred to as 'the Importer') having address at Binjhola Mod, Gohana Road, Panipat, Haryana-132103, had filed bill of entry no. 5862870 dated 09.05.2023 for import of goods declared as '100% Cotton Waste' under CTH 52029900 by declaring quantity 97000 Kgs through its authorised Customs Broker M/s Insynergy Supply Chain Solutions Pvt. Ltd. (hereinafter referred as 'the CB'). The subject goods having total declared assessable value is **Rs. 21,87,852/-** and total declared duty is **Rs. 3,62,090/-**

2. The subject bill of entry appears for assessment in FAG, the assessing officer found that the importer imported 100% Cotton Waste without permission from the Ministry of Environment forest climate change and the DGFT trade licence. Accordingly, the assessment officer raise query regarding submit the permission from CPCB and License from DGFT for import. The importer did not submit require details therefore the assessing officer pushed the subject bill of entry to PAG for further necessary action.

2.1. During the analysis of bill of entry, it is observed that the goods are 100% Cotton Waste. Whereas, import of Textiles Waste including cotton waste at Sr. No. B3030 of PART-B are restricted as per Hazardous Waste Management Rules 2016 and cannot be allowed to be imported without permission from the Ministry of Environment Forest Climate Change and the DGFT trade Licence. Accordingly, the bill of entry assesses on first check basis under 100% examination. The docks officer examined the cargo cover under the subject bill of entry, during the examination goods found as per declared. Further, the importer did not produce any import permission in the instant case for import of 100% Cotton Waste.

3. As per the Basel No. B3030 of PART-B of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 import of Cotton Waste are restricted and cannot be allowed to be imported without permission from the Ministry of Environment, Forest and Climate Change and the Directorate General of Foreign Trade license. however, the importer did not produce any import permission for the said consignment. Thus, the importer imported the restricted goods without appropriate import permission issued by Ministry of Environment, Forest and Climate Change and did not comply the import policy issued by DGFT in this regard. Non-compliance of the DGFT Policy makes the goods as Prohibited, therefore, liable for confiscation under Section 111(d) of the Customs Act, 1962. Thus, rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962, importer rendered himself for penal action under Section 112(a)(i) of the Customs Act, 1962.

4. Further, it appears that the Custom Broker did not follow due diligence in respect of imported goods. Further, he has also failed to comply with the provisions of the Custom Broker Licencing Regulations, 2018 (CBLR, 2018), thus, appears to be liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018

LEGAL PROVISIONS

5. Legal provisions applicable in this case under the Customs Act 1962 are as follows:

v. As per Section 46 of the Customs Act, 1962 **Entry of goods on importation:** If the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs,

46(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, and such other documents relating to the imported goods as may be prescribed.

46(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.

Import Policy for wastes:

Part B

List of other wastes applicable for import and export and not requiring Prior Informed Consent [Annex IX of the Basel Convention*]

Basel No	Description of wastes (1) (2)
B3030	<p>Textile wastes</p> <p>The following materials, provided they are not mixed with other wastes and are prepared to a specification:</p> <ul style="list-style-type: none"> - <i>Silk waste (including cocoons unsuitable for reeling, yarn waste and garnetted stock)</i>

<ul style="list-style-type: none"> • <i>not carded or combed</i> • <i>other</i> <p>- Waste of wool or of fine or coarse animal hair, including yarn waste but excluding garnetted stock</p> <ul style="list-style-type: none"> • <i>noils of wool or of fine animal hair</i> • <i>other waste of wool or of fine animal hair</i> • <i>waste of coarse animal hair</i> <p>- Cotton waste (including yarn waste and garnetted stock)</p> <ul style="list-style-type: none"> • <i>yarn waste (including thread waste)</i> • <i>garnetted stock</i> • <i>other</i> <p>- Flax tow and waste</p> <p>- Tow and waste (including yarn waste and garnetted stock) of true hemp (<i>Cannabis sativa L.</i>)</p> <p>- Tow and waste (including yarn waste and garnetted stock) of jute and other textile bast fibres (excluding flax, true hemp and ramie) - Tow and waste (including yarn waste and garnetted stock) of sisal and other textile fibres of the genus <i>Agave</i></p> <p>- Tow, noils and waste (including yarn waste and garneted stock) of coconut</p> <p>- Tow, noils and waste (including yarn waste and garneted stock) of abaca (<i>Manila hemp</i> or <i>Musa textilis Nee</i>)</p> <p>- Tow, noils and waste (including yarn waste and garneted stock) of ramie and other vegetable textile fibres, not elsewhere specified or included</p> <p>- Waste (including noils, yarn waste and garnetted stock) of manmade fibres</p> <ul style="list-style-type: none"> • <i>of synthetic fibres</i> • <i>of artificial fibres</i> <p>- Worn clothing and other worn textile articles</p> <p>- Used rags, scrap twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables of textile materials</p> <ul style="list-style-type: none"> • <i>sorted</i> • <i>other</i>
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The wastes in Part-B are restricted and cannot be allowed to be imported without permission from the Ministry of Environment, Forest and Climate Change and the Directorate General of Foreign Trade Licence, if applicable

v. 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;

v. Section 112 (Penalty for improper importation of goods, etc) of the Customs Act 1962 states that; 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

6. In view of above it appears that:

(i) The importer filed the bill of entry no. 5862870 dated 09.05.2023 for import of “100% Cotton Waste”, which are restricted as per import policy. Therefore, the subject goods covered under said Bill of Entry valued at **Rs. 21,87,852/-** are liable for confiscation under section 111(d) of the Customs Act, 1962.

(ii) Penalty on the importer i.e. M/s N K Fibers is imposable under Section 112(a)(i) of the Customs Act, 1962.

WAIVER OF PERSONAL HEARING AND SCN

7. Further, the importer vide their letter dated 22.05.2023 has requested for waiver of SCN and PH.

DISCUSSION AND FINDINGS

8. I have carefully gone through the facts of the case and find that M/s N K Fibers (BZPPM6452D), (hereinafter referred to as ‘the Importer’) having address at Binjhol Mod, Gohana Road, Panipat, Haryana-132103, had filed bill of entry no. 5862870 dated 09.05.2023 for import of goods declared as ‘100% Cotton

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'Waste' under CTH 5202990 by declaring quantity 97000 Kgs through their Customs Broker M/s Insynergy Supply Chain Solutions Pvt. Ltd. (hereinafter referred as 'the CB'). The subject goods having total declared assessable value is **Rs. 21,87,852/-** and total declared duty is **Rs. 3,62,090/-**

9. I find that the subject bill of entry pushed to PAG by FAG officer due to non-providing import permission from the Ministry of Environment forest climate change and the DGFT trade licence by the importer. During the analysis of document, I find that the goods are 100% Cotton Waste. Whereas, import of Textiles Waste including cotton waste at Sr. No. B3030 of PART-B are restricted as per Hazardous Waste Management Rules 2016 and cannot be allowed to be imported without permission from the Ministry of Environment Forest Climate Change and the DGFT trade Licence. Accordingly, the bill of entry assesses on first check basis under 100% examination. The docks officer examined the cargo cover under the subject bill of entry, during the examination goods found as per declared. Further, the importer did not produce any import permission in the instant case for import of 100% Cotton Waste.

10. I find that as per the Basel No. B3030 of PART-B of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 import of Cotton Waste are restricted and cannot be allowed to be imported without permission from the Ministry of Environment, Forest and Climate Change and the Directorate General of Foreign Trade license. however, the importer did not produce any import permission for the said consignment. Thus, the importer imported the restricted goods without appropriate import permission issued by Ministry of Environment, Forest and Climate Change and did not comply the import policy issued by DGFT in this regard. Non-compliance of the DGFT Policy makes the goods as Prohibited, therefore, liable for confiscation under Section 111(d) of the Customs Act, 1962. Thus, rendering the goods liable for confiscation under Section 111(d) of the Customs Act, 1962, importer rendered himself for penal action under Section 112(a)(i) of the Customs Act, 1962.

11. I find further that the Custom Broker did not follow due diligence in respect of imported goods. Further, he has also failed to comply with the provisions of the Custom Broker Licencing Regulations, 2018 (CBLR, 2018), thus, appears to be liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018

12. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry

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under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statuary obligation cast upon him and made wrong declaration about the description & CTH of imported goods.

13. In view of the above, I find that the importer has imported the restricted goods without appropriate import permission issued by Ministry of Environment, Forest and Climate Change and did not comply the import policy issued by DGFT, therefore the import goods liable for confiscation under Section 111(d) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 Provide that Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation where is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962.

14. I find that the importer vide its letter dated 22.05.2023 submitted that they don't want personal hearing & Show Cause Notice and requested for releasing the goods on payment of Fine/Penalty.

15. In view of above, I pass the following order.

ORDER

i. I order for confiscation of the goods "100% Cotton Waste" imported by M/s. N K Fibers vide Bill of Entry No. 5862870 dated 09.05.2023 having assessable value **Rs. 21,87,852** under Section 111(d) of the Customs Act, 1962 as these goods found to be restricted. However, I give an option to the importer to redeem the goods under provisions of Section 125(1) of the Customs Act, 1962 on payment of Redemption Fine of Rs.1,00,000/- (Rupees One Lakh Only) only in lieu of confiscation.

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ii. I impose a penalty of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand only) on M/s N K Fibers, under section 112(a)(i) of the Customs Act, 1962.

iii. I impose a penalty of Rs.25,000/- (Rupees Twenty Five Thousand Only) on Customs Broker M/s Insynergy Supply chain solution pvt ltd under section 117 of the Customs Act, 1962.

16. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962 and/ or any other law for the time being in force in the Republic of India.

Signed by
MUKESH KUMARI
Mukesh Kumari
ADDITIONAL COMMISSIONER
Customs
Date: 26/05/2023 M 16:00:00

F.NO. CUS/APR/BE/MISC/632/2023-Gr 3-O/o Pr Commr-Cus-Mundra 26-05-2023

To

M/s N K Fibers,
Binjhola Mod, Gohana Road,
Panipat, Haryana-132103,

Copy to:

1. The Dy. Commissioner of Customs, EDI, CH, Mundra
2. The Dy. Commissioner of Customs, RRA, CH, MUNDRA
3. The Dy. Commissioner of Customs, TRC, CH, Mundra
4. Office Copy