



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE MUNDRA, 5-B, PORT USER BUILDING (PUB),
AP & SEZ, PORT ROAD, MUNDRA PORT, MUNDRA-370421**

A	File No.:	CUS/APR/BE/2795/2022-Gr. 1
B	Order-in-Original No.:	MCH/ADC/MK/100/2023-24
C	Passed by:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	28.06.2023
E	Date of issue:	30.06.2023
F	Importer:	M/s Shri Ram Enterprises (IEC- ADSFS1284R) Vill Kahl Kweera, Bhawali, Distt. Nainital, Uttarakhand - 263132
G	DIN	20230671MO0000111D1C

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the **COMMISSIONER OF CUSTOMS (APPEAL), MUNDRA**, having office at **7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380009** in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

Sub.: Import of "Mixed Glycol" by M/s Shri Ram Enterprises (IEC- ADSFS1284R) - reg.

I/1266463/2023

Brief Facts of the Case

Name of Importer	:	M/s Shri Ram Enterprises
Address of Importer	:	Vill Kahl Kweera, Bhawali, Distt. Nainital, Uttarakhand - 263132
IEC No.	:	ADSFS1284R
Supplier details	:	M/s Time Techno Packaging LLC
Bill of Lading No. & Date	:	HLCUDX3210221753 dated 16.02.2021
Description of Goods	:	Mixed Glycol

1. Issue in Brief:

M/s Shri Ram Enterprises, Vill Kahl Kweera, Bhawali, Distt. Nainital, Uttarakhand - 263132. holding IEC NO: ADSFS1284R (hereinafter referred to as 'the Importer'), has imported the goods named as "Mixed Glycol" vide Bill of Lading No. HLCUDX3210221753 dated 16.02.2021 at Mundra port.

(Table-A)

Sr. No.	Bill of Lading No.	Description of Goods as Declared	Declared Net Quantity (in MTS.)	Declared Value of the Goods as per proforma Invoice (TTP-204/2020-21)
01	HLCUDX3210221753 dated 16.02.2021	Mixed Glycol CTH 38249100	236.4	USD 83,417/-

The DRI, Gandhidham Regional Unit (GRU) had requested this office (Custom House, Mundra) vide their letter dated 19.04.2021 to put on hold the import consignments and arrange for taking the samples in presence of DRI Officials and carry out testing of the subject goods covered under Bill of Lading No. HLCUDX3210221753 dated 16.02.2021 (IGM No. 2275535 dated 20.02.2021). The intelligence suggested that various importers are importing petroleum products which are restricted (as per the import policy) by mis-declaring them as mixed glycol/glycol or similar description. Accordingly, twelve (12) containers of M/s Shri Ram Enterprises destined for ICD TKD were put on hold at Exim Yard, AP & SEZ, Mundra for examination and sampling of the subject goods.

2. Action taken and investigations conducted: -

2.1 The examination of the said import consignment was carried by the SIIB officers, Customs House, Mundra. The officers verified the respective containers with seals mentioned in the Bill of Lading. The representative samples were drawn under panchnama dated 14.05.2021 at Exim Yard, AP & SEZ, Mundra and were sent to the Central Revenue Control Laboratory, Kandla for testing of the subject goods vide T.M. No. 02/17.05.2021.

I/1266463/2023

2.2 The test reports dated 04.06.2021 for both the samples were received from CRCL, Kandla stating that *“On the basis of the tested and relevant parameters, the sample agrees with Automotive Diesel as per IS 1460:2017. It is not Mixed Glycol.”*

2.3 The CRCL, Kandla opined that the sample meets the specification of *Automotive Diesel*. Thus, it appeared that the subject goods had been imported by the importer by way of mis-declaration as Mixed Glycol under CTH 38249100 in the Bills of Lading no. HLCUDX3210221753 dated 16.02.2021 instead of declaring correct description of the goods as *Automotive Diesel* falling under CTH 27101944.

2.4 As per the Schedule 1-Import Policy of the ITC (HS), pertaining to Section V Chapter 27, only State Trading Enterprises are permitted to import “Automotive Diesel” which is covered under Tariff Item No. CTH 27101944 of Customs Tariff. As per Para 2.20 of Foreign Trade Policy 2015-20 as extended, any goods, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprises (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). As per the Policy condition stipulated for Chapter 27, the import of goods falling under CTH 27101944 is as under:

“Import is allowed through IOC subject to para 2.20 of the Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P & NG’s Resolution No. P-23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS2796 (ITC HS Code 27101241) hand automotive diesel fuel, not containing biodiesel, conforming to standard is1460 (ITC 27101944) which would be allowed to be imported by entities in terms of MOPNG Resolution No. P-12029(II)/2? 2018 – OMC- PNG dated 08.11.2019.”

2.5 In view of the above facts/reasons, it appeared that goods were liable for confiscation under section 111(d) and 111(f) of the Customs Act, 1962. Therefore, the goods were seized by the proper officer under the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 10.06.2021.

2.6 A search was conducted at the office premises of M/s ISS Shipping India Pvt. Ltd Gandhidham the Shipping agent of the importer on 03.07.2021 and certain documents were withdrawn.

3. Statement dated 19.07.2021 of Shri. Kumar Natarajan Manager Operations of the Shipping Line was recorded who inter-alia stated that they had filed the IGM in respect of the subject imports by the importer as instructed by their principal M/s Hapag Lloyd Mumbai in this regard.

3.1 Statement dated 28.12.2021 of Shri Om Prakash, Partner of M/s Shri Ram Enterprises, was recorded who inter-alia stated that he is a partner in M/s Shri Ram Enterprises since the year 2018 since its establishment in 2018. The main business is trading of petroleum goods

I/1266463/2023

such as Mineral Turpentine Oil (MTO), Industrial Fuel oil & and trading of imported Mixed Glycol; that he handles work related to sale, purchase and import of these goods. The orders are placed telephonically with M/s Time Techno Packaging LLC, Dubai and after all the negotiations regarding price, they send the proforma invoice and the importers make 100 % advance payment against the invoice and then the goods are loaded for shipment to India; that they have not filed any Bill of Entry for the said Bill of Lading No. HLCUDX3210221753 dated 16.02.2021 reason being that the supplier at the time of sending goods informed that since they had made the payment late against the Performa invoice i.e after the committed or mutually agreed date, the supplier increased the rates by 30 USD per MT. The importers refused to send extra payment which the supplier was asking for by increasing the price and asked him to cancel the deal and refund the payment, but despite that the supplier loaded the goods and did not refund the payment. Then the importer requested via email dated 20.02.2021 to Hapag Lloyd, the Shipping Line with a copy to supplier to not file IGM for the said goods but the IGM was filed by the Shipping Line. Hence, they had not filed the Bill of Entry and were still asking the supplier to refund the advance payment made by them. They submitted copy of the referred mail in support of their statement; they once again reiterated that they had ordered for Mixed Glycol and before dispatching of their consignment they had cancelled the order due to the payment issues as stated above; that they were not aware about the Automotive Diesel sent by the supplier and they never ordered for Automotive Diesel; that they had made payment based on the proforma invoice for Mixed Glycol and submitted the copies of proforma invoice; that due to the aforementioned reasons they had not filed any Bill of Entry regarding the consignment and requested for allowing them to re-export the cargo so that their payment may be released by the supplier; that they further wanted to say that they had no clue that the goods were Automotive Diesel instead of Mixed Glycol; that the shipping line was also pressurizing them to pay heavy demurrage and detention charges, and they requested for allowing them to re-export the cargo; that **they did not want any Show Cause Notice and personal hearing in the matter**; that they are well aware that import of Automotive Diesel is prohibited as per Law.

4. Relevant Legal provisions of other Acts

4.1 Policy Condition of Chapter 27 for CTH

Item Tariff	Description	Policy	Condition
27101944----	Automotive diesel fuel, not containing biodiesel, conforming to standard 1460	State Trading Enterprises	Import as per Policy Condition (5) of Chapter 27.

4.2 Condition No. (5) of FTP of Chapter 27 is as below:

-(5) 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 MoP & NG Resolution No. P-

I/1266463/2023

23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS 2796 (ITC VIS Code: 27101241) and Automotive diesel fuel, not containing biodiesel, conforming to standard IS 1460 (ITC HS Code 27101944) which would be allowed to be imported by entities in terms of MOPNG Resolution No. OMC-PNG dated 08.11.2019.

4.3 General provisions 2.20 of Foreign Import Policy defines State Trading Enterprises (STEs) as –

(a) State Trading Enterprises (STEs) are governmental and nongovernmental 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.

4.4 Section 3 (3) of the Foreign Trade (Development and Regulation) Act, 1992

All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

4.5 Para 2.20 of the Foreign Trade Policy, 2015-2020

(a) State Trading Enterprises (STEs) are governmental and nongovernmental 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.

4.6 Provisions of the Petroleum Act, 1934

Section 2- Definitions.—In this Act, unless there is anything repugnant in the subject or context,— (a) “petroleum” means any liquid hydrocarbon or mixture of hydrocarbons, and any inflammable mixture (liquid, viscous or solid) containing any liquid hydrocarbon; [(b) “petroleum Class A” means petroleum having a flash-point below twenty-three degrees Centigrade; (bb) “petroleum Class B” means petroleum having a flash-point of twenty-three degrees Centigrade and above but below sixty-five degrees Centigrade; (bbb) “petroleum Class C” means petroleum having a flash-point of sixty-five degrees Centigrade and above but below ninety-three degree Centigrade;] (c) 7 [“flash-point”] of any petroleum means the lowest temperature at which it yields a vapour which will give a momentary flash when ignited, determined in accordance with the provisions of Chapter II and the rules made thereunder;

Section 7 of the Petroleum Act, 1934- No license needed for transport or storage of limited quantities of petroleum Class B or petroleum Class C.—

I/1266463/2023

Notwithstanding anything contained in this Chapter, a person need not obtain a license for the transport or storage of—

- (i) petroleum Class B if the total quantity in his possession at any one place does not exceed two thousand and five hundred liters and none of it is contained in a receptacle exceeding one thousand liters in capacity; or
- (ii) petroleum Class C if the total quantity in his possession at any one place does not exceed forty-five thousand liters and such petroleum is transported or stored in accordance with the rules made under section 4.

4.7 Petroleum Rules 1976

Restriction on delivery and dispatch of petroleum. No person shall deliver or dispatch any petroleum to anyone in India other than the holder of a storage license issued under these rules or his authorized agent or a port authority or railway administration or a person who is authorized under the Act to store petroleum without a license.

Rule 19 of the Petroleum Rules, 2002-Production of certificate and license for import—

(1) Every person desiring to import petroleum shall furnish personally or through his agent to the Commissioner of Customs. –

(a) certificate of storage accommodation in Form II signed by such person or his agent; and

(b) the license or an authenticated copy of the license for the import and storage of such petroleum: Provided that nothing in this rule shall apply to the importation, otherwise than in bulk of petroleum exempted under sections 7, 8, 9 and 10 of the Act: Provided further that the furnishing of a license under clause (b) shall not be necessary for the importation of petroleum

class C in bulk in quantity exempted under section 7 of the Act.

(2) Notwithstanding anything contained in sub-rule (1) a person may import petroleum Class A in bulk, even if –

- (i) he is not holding a license for storage at the port of importation; or
- (ii) the storage accommodation in the premises licensed in his name is not sufficient to hold the quantity of petroleum intended to be imported: Provided in both cases adequate advance arrangements to the satisfaction of the Conservator are made by the importer to distribute the petroleum from the post of import to premises licensed to store such petroleum.

4.8 LEGAL PROVISIONS OF THE CUSTOMS ACT, 1962 APPLICABLE IN THE CASE:

SECTION 111 (d) & (f) OF THE CUSTOMS ACT, 1962

111. Confiscation of improperly imported goods etc.

The following goods brought from the 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 water 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.

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

4.9 SECTION 112(a) OF THE CUSTOMS ACT, 1962

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, 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;

5. Summary of Investigations:

5.1 The importer has declared goods as mixed glycol in the Bill of Lading (BL No. HLCUDX3210221753 dated 16.02.2021) in 12 containers. The subject goods were examined by the officers of SIIB, Customs House, Mundra and representative samples were sent for testing. As per CRCL Kandla test report, the goods have the characteristics of **Automotive Diesel** confirming to standard IS 1460:2017 falling under CTH 27101944 and not mixed Glycol covered under CTH 38249100. Therefore, it appears that the importer has imported Automotive Diesel, restricted goods by mis-declaring and mis-classifying them as Mixed Glycol.

5.2 As per the Schedule 1 import policy of the ITC (HS) Classification pertaining to Section V Chapter 27, Automotive Diesel is restricted goods and not freely importable except by STE. Such import of Petroleum products requires license for import, delivery and dispatch. The importer in the present case is not holding status as STE, hence the subject import made by them appears to be in violation of the Foreign Trade Policy 2015-20 as extended. Therefore, it appears that goods are liable for confiscation under section 111(d) of the Customs Act, 1962.

5.3 The quantity of Automotive Diesel imported by the importer is

I/1266463/2023

exceeding the specified quantity and falls in the category of "Petroleum Class C" and as the import, storage and handling of products falling under "Petroleum Class C" are governed by the provisions of the Petroleum Act, 1934 (30 of 1934) and the import of Automotive Diesel, in this case which is to be considered as classifiable as "Petroleum Class C" requires mandatory license issued under Petroleum Rules, 1976. The importer has not produced any license for import, storage and handling of such goods as per section 7 of the petroleum act, 1934 read with rule 19 of petroleum rules, 1976. It appears that the subject goods mis-declared with reference to their description are in violation of the permission of the Petroleum Act, 1934 and therefore the goods appear to be liable for confiscation under the provisions of Section 111(d) and 111(f) of the Customs Act, 1962.

Show Cause Notice & Personal Hearing

6. The importer has already requested for waiver of the show cause notice and personal hearing in the matter during his statement dated 28.12.2021 and requested to allow re-export of the consignments covered under Bill of lading No. HLCUDX3210221753 dated 16.02.2021.

Following the principal of natural justice, opportunities of personal hearing in the subject case were granted on 09.05.2023, 23.05.2023 and 06.06.2023, however neither the importer nor his authorised representative appeared for the personal hearing.

Discussion & Findings

7. I have carefully gone through the investigation report dated 13.06.2022 received from Investigation Agency (SIIB), the available records of the case and applicable provisions of law. I find that the condition of principle of natural justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

7.1 I find that the importer M/s Shri Ram Enterprises has declared goods as Mixed Glycol in the Bill of Lading (HLCUDX3210221753 dated 16.02.2021). The subject goods were examined by the officers of SIIB, Customs House, Mundra and representative samples were sent for testing. As per CRCL Kandla test report, the goods have the characteristics of **Automotive Diesel** confirming to standard IS 1460:2017 falling under CTH 27101944 and not mixed Glycol covered under CTH 38249100. Hence, the importer has imported Automotive Diesel, restricted goods by mis-declaring and mis-classifying as Mixed Glycol.

I/1266463/2023

7.2 I find that the goods falling under tariff heading 27101944 are restricted and allowed to be imported through State Trading Enterprises (STE) only as per Policy Condition of the Chapter-27 of ITC (HS), Schedule-I.

The Policy condition of the Chapter 27 is reproduced below: -

“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 & NG’s Resolution No. P-23015/1/2001-MKT dated 08.03.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date.”

The Para 2.20 of the Foreign Trade Policy is reproduced below: -

“2.20 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 person to import or export any of the goods notified for exclusive trading through STEs.”

7.3 The policy provisions mentioned in the Indian Trade Classification (Harmonised System) of Import in the Schedule-I is binding as per the FTP 2015-20, Chapter-2 and Paragraph 2.02 thereto.

7.4 In view of the discussions made in para supra, I find that the Importer M/s Shri Ram Industries., has tried to import “Automotive Diesel” by mis-declaring the same as “Mixed Glycol” classified their product under CTH- 38249100 instead of CTH- 27101944. By doing so, the importer has violated the provisions of FTP and Customs Act and made

I/1266463/2023

the imported goods liable for confiscation under Section 111 (d) and 111(f) of the Customs Act, 1962. Also, the importer is liable for penal action under Section 112 (a) (i) of the Act *ibid*. Further, it is noticed that the goods are lying in the custody of the custodian since long and incurred substantial amount by way of demurrage and detention. It is also a fact that the goods are requested for re-exporting purpose, these facts have bearing while determining quantum of Redemption Fine and Penalty.

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

ORDER

8.1 I reject the declared classification of imported goods declared as "Mixed Glycol" which was classified under CTH 38249100 and order the same to be re-classified under CTH- 27101944 in view of test report of CRCL, Kandla dated 04.06.2021.

8.2 I order for confiscation of imported goods (i.e Mixed Glycol) valued at USD 83417 (**Rs. 61,56,175/-**) covered in the Bill of Lading No. HLCUDX3210221753 dated 16.02.2021 under Section 111 (d) and 111(f) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 11,00,000/-** (Rupees Eleven Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

8.3 I also impose a penalty of **Rs. 7,00,000/-** (Rupees Seven Lakhs Only) on the importer M/s Shri Ram Enterprises., under Section 112 (a)(i) of the Customs Act, 1962.

8.4 I also permit to re-export of the confiscated goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

9. 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.

1 0 . The investigation report F.No. S/15-96/SIIB-B/MixedGlycol/CHM/21-22 dated 13.06.2022 issued by the Deputy Commissioner, SIIB, Customs House, Mundra, is hereby disposed of.

I/1266463/2023

Signed by

Mukesh Kumari

Date: 28-06-2023 19:06:23

Additional Commissioner

Import Assessment, CH Mundra

F.No. CUS/APR/BE/2795/2022-Gr. 1 Date:28-06-2023

To,

M/s Shri Ram Enterprises

Vill Kahl Kweera, Bhawali, Distt.

Nainital, Uttarakhand – 263132

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 Deputy Commissioner of Customs (SIIB), Custom House, Mundra.
5. Guard File.