

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX : 02838-271425</p>	
A	File No.	CUS/APR/MISC/3047/2024-Gr 2O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/283/2024-25
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	06.02.2025
E	Noticee/Party/Importer/ Exporter	M/s Indo Nippon Trading Co., Right Side Portion, First Floor, 656, Bara Hindu Rao, Delhi - 110006
F	DIN No.	20250271MO000000CE9A

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

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये 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 ज्यूटि/ 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.

Brief Facts of the Case

M/s. Indo Nippon Trading Co., Right Side Portion, First Floor, 656, Bara Hindu Rao, Delhi - 110006 holding IEC - **BLEPY9986K** (hereinafter referred to as 'the Importer' for the sake of brevity) filed Bills of Entry No. **9984304 dated 05.02.2024** and **9984272 dated 05.02.2024** for clearance of **17,786 PCS of Old and Used Tyres for A.D.V. purpose** having total assessable value of **Rs. 54,98,025/-**.

2. **SEIZURE OF GOODS:** Based on Letter dated 29.03.2024 received from Central Intelligence Unit, Customs House Mundra, directions were issued to Docks Examination, Custom House Mundra for examination/re-examination of the goods imported under BE No. 9984304 dated 05.02.2024 and 9984272 dated 05.02.2024 and appointment of the empaneled Chartered Engineer, who has attended the training program organized on 23.02.2024, to survey the goods covered under said Bills of Entry, in order to ascertain the actual value and description of goods. The Chartered Engineer vide their Survey Reports No. CE/TZ/MUN/TYRE-002/2024-25 and CE/TZ/MUN/TYRE-002/2024-25 both dated 02.04.2024 concluded that the goods imported vide Bills of Entry No. 9984304 dated 05.02.2024 and 9984272 dated 05.02.2024 will not be categorized as Animal Drawn Vehicle (ADV) tyres and are old and used tyres. The imported goods can be used in passenger car vehicles and Light Trucks and other. The Chartered Engineer has also valued the goods as per the current market details with respect to old and used tyres of various size and brands. Charter Engineer has also found that the importers have imported the goods by way of huge undervaluation. Further, in the Examination report it was also affirmed that the goods are old and used tyres.

In view of the report submitted by Docks Officer in the system and Chartered Engineer Survey Reports. It appeared that the Importer had imported the goods covered under Bills of Entry No. 9984304 dated 05.02.2024 and 9984272 dated 05.02.2024 by way of mis declaration of description, mis-classification and under valuation of the goods and thus by doing so the importer has contravened the provisions of Section 46 of the Customs Act and Foreign Trade Policy condition prescribed by DGFT. In absence of DGFT license for import of restricted item i.e. old and used tyres, goods become restricted/prohibited. Therefore, could not be allowed for home consumption and liable for confiscation.

In view of above, Letter dated 15.04.2024 was issued to DC/Docks to Seize the goods imported by the importer mentioned above. The same were seized vide Seizure Memos dated 22.04.2024 under Section 110(1) of the Customs Act, 1962.

3. **APPEAL BY THE IMPORTER:** The importer filed Special Civil Application No. 3624 of 2024 in the Hon'ble High Court of Gujarat and this office filed Affidavit-in-Reply/Para-wise Comments to the Special Civil Application on 22.10.2024.

In Point 5.2 and 5.12 of the above said Para-wise comments, this office has already submitted following remarks:

Point 5.2

“With regard to the contents of paragraph no. 2 & 3, it is disputed and denied in toto. It is submitted that the appellant M/s Indo Nippon Trading Company has mis-declared the goods covered under Bills of Entry Nos. 9984272 dated 05.02.2024 and 9984304 dated 05.02.2024 as old and used tyres for Animal Driven Vehicle instead of Old and used truck/bus/car tyres and also mis-classified the same under CTH 401202090-Others, to avoid the restriction imposed on import of Old and Used Retreated or used pneumatic tyres. It also appears that the imported goods ‘Old and Used Tyres for A.D.V. purpose’ have been imported in violation of Para 2.31 of Foreign Trade Policy condition, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for Import. However, the appellant has not produced any authorization issued by DGFT for importation of the used and old tyres. In absence of DGFT license for import of restricted item i.e. old and used tyres, goods become prohibited. Therefore, the appellant’s request to clear the goods for home consumption, is not acceptable. Further, the appellant has sought copies of the Chartered Engineer’s Report. In this regard, it submitted that the Show Cause Notices in the subject matter have been issued on 18.10.2024 and the Chartered Engineer’s reports have also been attached with the SCNs. With regard to the contents of paragraph no. 2 & 3, it is disputed and denied in toto. It is submitted that the appellant M/s Indo Nippon Trading Company has mis-declared the goods covered under Bills of Entry Nos. 9984272 dated 05.02.2024 and 9984304 dated 05.02.2024 as old and used tyres for Animal Driven Vehicle instead of Old and used truck/bus/car tyres and also mis-classified the same under CTH 401202090-Others, to avoid the restriction imposed on import of Old and Used Retreated or used pneumatic tyres. It also appears that the imported goods ‘Old and Used Tyres for A.D.V. purpose’ have been imported in violation of Para 2.31 of Foreign Trade Policy condition, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for Import. However, the appellant has not produced any authorization issued by DGFT for importation of the used and old tyres. In absence of DGFT license for import of restricted item i.e. old and used tyres, goods become prohibited. Therefore, the appellant’s request to clear the goods for home consumption, is not acceptable. Further, the appellant has sought copies of the Chartered Engineer’s Report. In this regard, it submitted that the Show Cause Notices in the subject matter have been issued on 18.10.2024 and the Chartered Engineer’s reports have also been attached with the SCNs.”

Point 5.12

“With regard to the contents of paragraph no. 6(B), it is disputed and denied in toto. It is submitted that the appellant has prayed for provisional release and provisional assessment of goods covered under Bills of Entry Nos. 9984272 and 9984304, both dated 05.02.2024. In this regard, it is submitted that the appellant has attempted to illegally import the impugned goods, which are old and used tyres and are ‘second hand goods other than capital goods’ which falls under Sl No. II of para 2.31 of FTP, 2023, which is ‘Restricted’ and is importable only against authorisation. However, they have not produced any authorization issued by DGFT for importation of the used and old tyres. In absence of DGFT license for import of restricted item i.e. old and used tyres, goods become prohibited. Therefore, impugned goods cannot be allowed for home consumption and the same are liable for confiscation under Section 111 (d) of the Customs Act, 1962.”

4. **REQUEST FOR PROVISIONAL RELEASE OF GOODS:** The importer vide their letter dated 18.06.2024 requested for provisional release of the goods

imported vide BE No. 9984304 dated 05.02.2024 and 9984272 dated 05.02.2024 seized vide Seizure Memos dated 22.04.2024 under Section 110(1) of the Customs Act, 1962.

5. RELEVANT LEGAL PROVISIONS IN THE CASE

SECTION-46(4) of the Customs Act, 1962- Entry of Goods on importation- The importer while presenting a bill of entry shall at the foot thereof 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.

SECTION-110A of the Customs Act, 1962- Provisional release of goods, documents and things seized pending adjudication. [Inserted by Act 29 of 2006, Section 26 (w.e.f. 13.7.2006)]- Any goods, documents or things seized under section 110, may, pending the order of the adjudicating officer, be released to the owner on taking a bond from him in the proper form with such security and conditions as the Commissioner of Customs may require.]

SECTION 111(d) of the Customs Act, 1962- 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;

SECTION 111(m) of the Customs Act, 1962- Confiscation of improperly imported goods, etc.

1. 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.
2. 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.

SECTION 112(a)(i) of the Customs Act, 1962- Penalty for improper importation of goods, 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;

6. Thus, the importer mis-declared the goods. The importer failed to observe the conditions of Section 46(4) of the Customs Act, 1962 and made the goods liable for confiscation under the provisions of Section 111(d) and 111(m) of the Custom Act 1962. For the said act of omission and commission, the importer appears liable to the penal action under the provisions of Section 112(a)(i) of the Customs Act, 1962.

7. Personal Hearing

7.1 The personal hearing in this case was granted on 06.02.2025 in response to which Shri Amal Paresh Dave, Advocate attended the PH. He reiterated his written submission dt. 15.06.2024 and requested for provisional Release and Provisional Assessment of the goods.

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Discussion & Findings

8. I have carefully gone through the facts of the case and records & evidences submitted before me. I find that the goods covered under Bill of Entry No. 9984272 dated 05.02.2024 and 9984304 dated 05.02.2024 are mis-declared in terms of description as old and used tyres for Animal Driven Vehicle instead of Old and used truck/bus/car tyres and also in terms of value as reported by the CE. The same are also mis-classified under CTH 401202090-Others, so as to avoid the restriction imposed on import of Old and Used Retreated or used pneumatic tyres.
9. I find that the imported goods 'Old and Used Tyres for A.D.V. purpose' have been imported in violation of Para 2.31 of Foreign Trade Policy condition, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for Import. However, the importer had not produced any authorization issued by DGFT for importation of the used and old tyres. Thus rendered the goods as prohibited.
10. It is evident that the import of total 17,786 pcs. of the Old & Used tyres vide 02 Bills of Entry No. 9984272 & 9984304 both dated 05.02.2024 without a valid license issued by the DGFT is in violation of Foreign Trade Policy and mis-declared in terms of value in the import documents and has rendered the imported goods as prohibited. Therefore, I find that the 17,786 pcs. of the Old & Used tyres are liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962 and cannot be allowed to be released for home consumption.

Order

11. In view of the foregoing discussion and findings, I pass the following Order:
 - 11.1 I reject the application of the Importer M/s. Indo Nippon Trading Co. for provisional release of goods imported vide Bills of Entry No. 9984304 dated 05.02.2024 and 9984272 dated 05.02.2024.

11.2 This order is being issued without prejudice to any other action that may be taken in respect of the above 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)
Date: 06-02-2025 18:23:57
Additional Commissioner of
Customs
Import Assessment
Custom House, Mundra

**To,
M/s. Indo Nippon Trading Co.,
Right Side Portion, First Floor,
656, Bara Hindu Rao, Delhi - 110006**

Copy to:

1. The Deputy Commissioner of Customs (RRA/TRC/EDI), CH, Mundra.
2. Guard File.