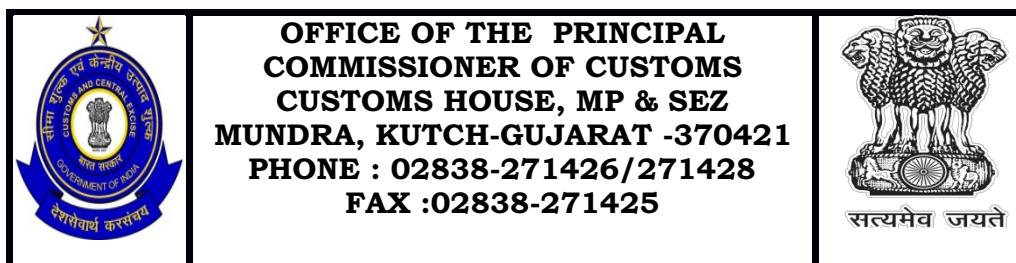


Outward No.-4307



<b>A</b>	<b>File No.</b>	<b>CUS/APR/INV/158/2024-Gr 2-O/o Pr Commr-Cus-Mundra</b>
<b>B</b>	<b>OIO No.</b>	<b>MCH/ADC/ZDC/243/2025-26</b>
<b>C</b>	<b>Passed by</b>	<b>Dipak Zala Additional Commissioner, (Import Assessment), Custom House Mundra.</b>
<b>D</b>	<b>Date of order</b>	<b>10.09.2025</b>
<b>E</b>	<b>Date of Issue</b>	<b>10.09.2025</b>
<b>F</b>	<b>Noticee / Party / Importer</b>	<b>M/s. Kabir Farm, Survey No. 472, Paiki Plot – 103/3 Paik, 142 Paiki North side Chikuwadi, Nr Somnath Mahadev Mand Suezfarm Pirana Road, Behrampura, Ahmedabad Gujrat – 380022</b>
<b>G</b>	<b>DIN</b>	<b>20250971MO000099559C</b>

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.  
The Commissioner of Customs (Appeal), MUNDRA,  
Office at 7<sup>th</sup> floor, Mridul Tower, Behind Times of India,  
Ashram Road Ahmedabad-380009
3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

**BRIEF FACTS OF THE CASE:**

**1.** **M/s.Kabir Farm**, Survey No. 472, Paiki Plot- 103/3 Paik, 142 Paiki North side Chikuwadi, Near Somnath Mahadev Mand Suezfarm Pirana Road, Behrampura, Ahmedabad Gujarat- 380022 holding **IEC - AAXFK0659C** (hereinafter referred to as 'the Importer' for the sake of brevity) filed **Bill of Entry No. 9748644 dated 20.01.2024** for clearing total **17881 pcs. of Old and Used Tyres of different sizes for Animal Driven Vehicle (ADV)** under CTH: 40122090, with an assessable value of Rs. 37,75,261/-.

**SEIZURE OF THE GOODS:**

**2.** On the basis of the intelligence indicating mis-declaration of the goods imported under Bill of Entry No. 9748644 dated 20.01.2024, the Central Intelligence Unit, Custom House, Mundra, examined the goods in the presence of representative of the importer, Shri Sachin Barve, Senior Scientific Officer of IRMRA (Indian Rubber Manufacturers Research Association), Thane, Shri Sanjay Chatterjee, Assistant Director General of ATMA (Automotive Tyre Manufacturers Association), New Delhi and Mr. Anwar Y Kukad, Empaneled Chartered Engineer under the **Panchanama dated 13.02.2024**. During the examination, it was found that the goods were old and used tyres of various sizes. During the course of examination, after inspection of the goods, Shri Sanjay Chatterjee, Assistant Director General of ATMA (Automotive Tyre Manufacturers Association), New Delhi, informed that the goods were basically old and used trucks/buses/cars tyres, and the same were usable in motor vehicles as per their specification. He also informed that as per BIS standard IS :13444: 1992- Animal Drawn Vehicle – Pneumatic Tyres specification- the sizes are as follows: - 5.00-19, 6.00-19, 7.00-19, 8.00-19 and 6.00-20. He further informed that during the inspection none of the tyres sizes as mentioned under Animal Driven Vehicle (ADV) category were found.

**3.** Further, in this regard, vide letter F. No. IRMRA/MUNDRA CUSTOMS/2024/1 dated 15.02.2024, Inspection Report and expert opinion received from Dr. Bharat Kapgate, Senior Assistant Director of IRMRA (Indian Rubber Manufacturers Research Association), Thane (a world class accredited Lab under DDIIT, Ministry of Commerce & Industry, Government of India), wherein it was informed that (i) Tyres covered under Bill of Entry No. 9748644 dated 20.01.2024 lying at Mundra port were inspected and found that tyre lots consists of used passenger car, light and heavy commercial vehicles tyres and in order to examine the tyres in details, designated officers picked up random samples from each lots. (ii) From the inspected tyre samples, around 70-80% samples found to be still in good condition, have residual life around 25000- 30000 KM (Based on the measured non-skid depth-NSD) and can be sold in market for fitment in vehicles as second- hand/used tyres. (iii) Around 20-30% inspected tyres can be used only after repairing (in case of passenger car tyres) & retreading (in case of commercial vehicle tyres). Further, they confirmed

that all the inspected tyre sizes were meant for passenger car, light and heavy commercial vehicles and not for Animal Driven Vehicles (ADV). The inspected tyre sizes were also not listed in BIS standard IS 13444:1992, which specifies Animal Driven Vehicles- Pneumatic tyres. They opined that these tyres cannot be declared as for use on Animal Driven Vehicles (ADV).

**4.** In view of the above facts, it appeared that the importer mis-declared and mis-classified the impugned goods as old and used tyres for Animal Driven Vehicle (ADV) under CTH 40122090- Others, instead of correctly declaring them as Old and used truck/bus/car tyres under CTH: 40122010 and 40122020; to avoid the restriction imposed on import of old and used pneumatic tyres for trucks/buses/cars. Further, It appeared that the impugned goods were imported in violation of the condition prescribed under Para 2.31 of Foreign Trade Policy(FTP)- 2023, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for their import. However, the importer could not produce any authorization issued by DGFT for importation of the old and used pneumatic tyres.

**5.** Thus, it appeared that the impugned goods were mis-declared and mis-classified, and their import was in contravention of the prevailing FTP. Hence, it appeared that the impugned goods were liable for confiscation under Section 111 (d) & 111(m) of the Customs Act, 1962, and, therefore, the same were seized by the CIU, Customs House, Mundra vide **seizure memo dated 19.02.2024** under Section 110 of the Customs Act, 1962.

#### **REQUEST FOR PROVISIONAL RELEASE OF THE GOODS:**

**6.** The Importer, vide their letter dated 22.07.2025, submitted the copy of the OIA No. MUN-CUSTM-000-APP-01-25-26 dated 04.04.2025 passed by the Commissioner (Appeals), Ahmedabad in the case of M/s. Santosh A.D.V. Tyres, and requested for provisional release of the goods imported under BE No. 9748644 dated 20.01.2024 and seized vide seizure memo dated 19.02.2024 under Section 110 of the Customs Act, 1962.

#### **RELEVANT LEGAL PROVISIONS IN THE CASE:**

**7.** In the instant case, relevant legal provisions are as under:

**(i) 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.

**(ii) SECTION-110A of the Customs Act, 1962-** Provisional release of goods, documents and things seized pending adjudication. [Inserted by Act29of2006, 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.]

**(iii) 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;

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

**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;

#### **PERSONAL HEARING:**

**8.** The personal hearing in this case was granted on 06.09.2025 in response to which Shri Parth Rachchh, authorized representative of the importer, attended the hearing in virtual mode. During the course of hearing, he requested to consider the importer's application dated 22/29.07.2025 and the submission emailed on 06.09.2025 for provisional release of the goods.

#### **DISCUSSION AND FINDINGS:**

**9.** 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. 9748644 dated 20.01.2024 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.

**10.** 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, wherein all second hand / used goods, other than capital goods are restricted and required Authorization for Import. However, the importer

has not produced any authorization issued by DGFT for importation of the used and old pneumatic tyres. Thus, the absence of an authorization/license of the DGFT against the said goods has rendered them as prohibited goods.

**11.** I find that, in the case of the Order-in-Appeal (OIA) No. MUNCUSTM-000-APP-01-25-26 dated 04.04.2025 passed in favour of M/s. Santosh ADV Tyres, this office has already filed an appeal before the Hon'ble CESTAT Ahmedabad. Accordingly, in view of the pending appeal, I do not consider it appropriate to place reliance on the said OIA at this stage.

**12.** Therefore, I find that the 17,881 pcs. of the Old & Used tyres are liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962 and cannot be provisionally released for home consumption.

### **Order**

In view of the foregoing discussion and findings, I pass the following Order:

**(i)** I reject the application of the Importer M/s. Kabir Farm for provisional release of goods imported vide Bill of Entry No. 9748644 dated 20.01.2024.

**(ii)** 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.

(Dipak Zala)  
Additional Commisioner  
Customs House Mundra

To,

**M/s. Kabir Farm,**  
Survey No. 472, Paiki Plot- 103/3,  
Paik, 142 Paiki, North side Chikuwadi,  
Near Somnath Mahadev Mand,  
Suezfarm Pirana Road, Behrampura,  
Ahmedabad Gujarat- 380022

### **Copy to:**

- (i) The Deputy Commissioner of Customs (RRA/TRC/EDI), CH, Mundra.
- (ii) Guard File.

