

		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62	
A. File No.	:	GEN/SHED/Misc/261/2024-EA-O/o	Pr-Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/114/2024-25	
C. Passed by	:	Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra	
D. Date of order /Date of issue	:	05-08-2024	
E. Show Cause Notice No. & Date	:	Waiver of SCN and Personal Hearing	
F. Noticee(s)/Party/ Exporter	:	M/s Promonant Export Private Limited, 52, Duo Marvel Layout, Yelahanka, Bangalore, Bengaluru Urban, Bangalore, Karnatka-560064.	
G. DIN	:	20240871MD000000A5C8	

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 रोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

**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 के, और सीमा शुल्क अधिनियम 1982, अपील नियम) 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.

Subject:- Export of Shuttering Timbers for Construction under Shipping Bill No.1874542 dated 22.06.2024 and Shipping Bill No.1880013 dated 22.06.2024 filed by M/s Promonant Export Pvt. Ltd.-Reg.

BRIEF FACTS OF THE CASE:

M/s Promonant Export Pvt. Ltd., Branch Sr. No.0, 52, Duo Marvel Layout, Yelahanka, Bengaluru Urban, Bangalore, Karnataka-560064, IEC No.AAKCP4853D has filed Shipping Bill Nos.1874542 dated 22.06.2024 and Shipping Bill No.1880013 dated 22.06.2024 through their CHA-M/s Sai Clearing and Forwarding Agency for export of goods declared as "Shuttering Timbers for Construction" under CTH-44071100.

2. The details of the Shipping Bills are as under in the table:-

Sr. No.	Shipping Bill No. and Date	Description of Goods	CTH	Net Weight (in Kg)	FOB Value Declared (in Rs.)
1	1874542 dated 22.06.2024	Shuttering Timbers For Construction	44071100	26210	13,67,872
2	1880013 dated 22.06.2024	Shuttering Timbers For Construction	44071100	25900	13,85,733

3. During examination of the cargo covered in above Shipping Bills, the Dock Officer observed that the exporter in the Marks and Nos of the Shipping Bills has declared that the export is being made in respect of cargo imported vide Bill of Entry No. 3670908, dated 25.05.2024. It was observed that in the said Bill of Entry goods were imported by M/s Bajrang Timber Store, Gandhidham under the description "Timber Redwood, Sawfallin Grade, Kiln Dried, (Pinus Sylvestris)" under CTH-44071100. On perusal of Schedule-2 of the Export Policy, for the export of goods under CTH-44071100 having description "Sawn Timber made exclusively out of imported logs/timber of all the species of wood other than CITES Appendix-I & II species", it was observed that the export is free under the said CTH, subject to conditions Sr. no. i to viii. For ease of reference, the conditions **i to viii** are reproduced herein below:

(i) The Export would be confined to the species which has been imported;

(ii) **The importer and exporter shall be the same firm and the import and export shall have to be effected from the same port.** The scheme will be operational only from the ports of Chennai, Kandla, Kolkata, Mangalore, Mumbai, Mundra, Nhava Sheva (JNPT), Tuticorin, Vishakhapatnam and the Land Customs station.....

(iii) The export of sawn products derived from imported logs shall not exceed 60% of the imports in volume terms;

(iv) The value addition of such exports shall be not less than 30%.

(v) The Saw Mill of the exporter, where imported timber is sawn shall be registered with the State Forest Department and shall be located away from the forest area in a location approved by the Conservator of Forests of the State Government;

(vi) The exporter must undertake exports within a period of 12 months from the date of import;

(vii) **The export contracts shall be registered with the Chemicals and Allied Products Export Promotion Council (CAPEXIL) who will monitor them to ensure that the scheme is not abused.**

(viii) The laws and rules framed by the Central Government

and the State Government regulating timber.....

It was observed that in the instant case the importer was M/s Bajrang Timber Store and the exporter is M/s Promonant Export Private Limited, therefore the condition no. (ii) is not fulfilled. Moreover, the exporter did not produce the contract registered with CAPEXIL, thus it appears that condition no.(vii) was also not fulfilled. Accordingly, Shipping Bills were sent for advice to Assessment group, wherein it was advised that "please put on file for further action".

4. During examination of the cargo, the Docks Officer observed that the export is being made in respect of cargo imported vide Bill of Entry No.3670908 dated 25.05.2024. The details of Bill of Entry No. is as under:-

Sr. No.	Name of Importer	Bill of Entry No. and Date	Description of Goods	CTH	Gross Weight (in Kg)	Assessable Value (in Rs.)
1.	M/s Bajrang Timber Store, Plot No.07, LS No.172, Village-Chudva, Gandhidham-370240, IEC:-3715001208	3670908 dated 25.05.2024	Timber Redwood, Sawfallin Grade, Kiln Dried, (Pinus Sylvestris)	44071100	244837	78,23,933

5. From the above, it is noticed that the goods were imported by M/s Bajrang Timber Store, Plot No.07, LS No.172, Village-Chudva, Gandhidham-370240, IEC No.-3715001208 under the description Timber Redwood, Sawfallin Grade, Kiln Dried, (Pinus Sylvestris) under CTH-44071100.

6. In view of above, it is evident that as Schedule-II of the Export Policy export of Shuttering Timbers is "Free" with some condition. However, the exporter, M/s Promonant Export Pvt. Ltd. has contravened the above condition No.(ii) and (vii) of the Export Policy for Chapter-44071100.

7. As per sub-section 2 of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, the Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting **or otherwise regulating**, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology. Further, as per sub-section 3 of Section 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. For ease of reference Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 is reproduced as under:-

Section 3: Powers to make provision relating to imports and exports.

3. (1) The Central Government may by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefit under the foreign trade policy or is dealing with specified services or specified technologies.

(3) 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.

8. Para-2.01 of the Foreign Trade Policy, 2023 deals with the Restricted/Prohibited/Free with some condition goods as stipulated below:

2.01 Policy regarding import /Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are '**Free**' for import/export, but **subject to conditions stipulated in other Acts or in law for the time being in force.**

9. As per Section 11 of the Customs Act, 1962 *no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.*

10. From the above facts, it appears that the exporter made the violation of the export policy and therefore the goods attempted for export are liable for confiscation under Section 113(d) of the Customs Act, 1962 which is re-produced as under:

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -

The following export goods shall be liable to confiscation as per:

(d) *any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

11. Whereas, on account of export goods liable for confiscation, the Exporter has made themselves liable for penal action under Section 114 (i) of the Customs Act, 1962 and the same is reproduced here-in-below :

SECTION 114 : Penalties for attempt to export goods improperly, etc. - Any person 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 113, 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 three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;*

12. In view of above, it appears that:

(i) The goods attempted to be export vide Shipping Bill No.1874542 dated 22.06.2024 and Shipping Bill No.1880013 dated 22.06.2024 declared as "Shuttering Timbers for Construction" under CTH-44071100 and having declared FOB value of Rs.13,67,872/- and Rs.13,85,733/- respectively are liable for confiscation under Section 113(d) of the Customs Act, 1962;

(ii) The exporter, M/s Promonant Export Pvt. Ltd., Bengaluru is liable for penalty under the provisions of

Sections 114(i) of the Customs Act, 1962.

13. The exporter, vide letter dated 26.07.2024 submitted that:

This is in reference to the above subject, above Shipping Bills have been filed by Custom Broker M/s. Sai Clearing & Forwarding Agency for the Export of SHUTTERING TIMBER FOR CONSTRUCTION.

It is to submit that we received order from our buyer who is building Hotel at Maldives. We were under impression that only that Shuttering Timber can be exported which was imported in India from other country. Therefore, we procured the imported Timber from the importer, M/s Bajrang Timber Store, Plot No.07, LS No.172, Village-Chudva, Gandhidham-370240, IEC:-3715001208 vide Bill of Entry No.3670908 dated 25.05.2024 and filed the subject shipping bills.

On entering of cargo in CFS, we got to know that only the importer can export the imported timber and CAPEXIL Certificate shall also be issued only to the actual importer for export purpose.

Now, we have convinced the actual importer, M/s Bajrang Timber Store, Plot No.07, LS No.172, Village-Chudva, Gandhidham-370240, IEC:-371500120 to export the above Shuttering Timber to the same buyer of Maldives on our behalf. Further, CAPEXIL Certificate has also been procured for the same cargo.

In this matter we do not want any Show Cause Notice or Personal Hearing so please consider request and proceed for the action which is fits legally.

Keeping above in view, since, the cargo is imported and out the restriction of Export Process of Indian Policy we request your good self to kindly consider our request and keep lenient view and approve our Shipping Bills Cancellation request and allow us to take the cargo back to town so that we can file new Shipping Bill in the name of actual importer with CAPEXIL Certificate.

RECORDS OF PERSONAL HEARING :

14. The exporter, vide letter dated 26.07.2024 submitted that in this matter they do not want any Show Cause Notice or Personal Hearing so please consider request and proceed for the action which is fit legally.

DISCUSSION AND FINDINGS:

15. The exporter, vide letter dated 26.07.2024 submitted that in this matter they do not want any Show Cause Notice or Personal Hearing so as per principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on merits.

15.1 The issues to be decided by me are:

(i) The goods attempted to be export vide Shipping Bill Nos.1874542 dated 22.06.2024 and Shipping Bill No.1880013 dated 22.06.2024 declared as "Shuttering Timbers for Construction" under CTH-44071100 and having declared FOB value of Rs.13,67,872/- and Rs.13,85,733/- respectively are liable for confiscation under Section 113(d) of the Customs Act, 1962;

(ii) The exporter, M/s Promonant Export Pvt. Ltd., Bengaluru is liable for penalty under the provisions of Sections 114(i) of the Customs Act, 1962.

15.2 I find that in the present case the exporter attempted to export Shuttering Timber which falls under CTH-44071100. I find that the Export Policy for Sawn Timber is Free with some condition and in the present case the exporter failed to comply the same. Therefore, the goods attempted to be exported in violation of Export Policy are liable for confiscation under Section 113(d) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962. However, I find that the goods are not from Indian origin and were imported by M/s Bajrang Timber Store, Gandhidham vide Bill of Entry No.3670908, dated 25.05.2024 and they also obtained the Chemicals and Allied Products Export Promotion Council (CAPEXIL) certificate and now the impugned goods shall be exported by the actual importer, M/s Bajrang Timber Store, Gandhidham in compliance of the export policy on behalf of the present exporter, M/s Promonant Export Pvt. Ltd.

15.3 I find that Section 114 of the Customs Act, 1962 stipulates that:

Any person 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 113, 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 ¹[²not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, 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 any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

15.4 I find that the Export Policy for impugned goods attempted to be exported is Free with some condition and in the present case the exporter failed to comply the same. Therefore, the goods attempted to be exported in violation of Export Policy are liable for confiscation under Section 113(d) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962. Further, for such acts of omission, the exporter is liable for under **Section 114(i)** of the Customs Act, 1962.

16. In view of the foregoing discussions and findings, I pass the following order:

ORDER

(i) I order to confiscate the goods attempted to be exported vide Shipping Bill No.1874542 dated 22.06.2024 and Shipping Bill No.1880013 dated 22.06.2024 declared as "Shuttering Timbers for Construction" under CTH-44071100 and having declared FOB value of Rs.13,67,872/- and Rs.13,85,733/- respectively under Section 113(d) of the Customs Act, 1962. However, I give option to redeem the same on payment of redemption fine of Rs.3,00,000/- (Rupees Three lakh only) for back to town purpose and to be exported by the actual importer, M/s Bajrang Timber Store, Gandhidham only on compliance of the Export policy.

(ii) I impose and order to recover Penalty of Rs. 1,50,000/- (Rupees One lakh Fifty Thousand only) upon the exporter, M/s Promonant Export Pvt. Ltd., Bengaluru under the provisions of Sections 114(i) of the Customs Act, 1962.

17. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
Mukesh Kumari

Date: 05-08-2024 18:00:44
(Mukesh Kumari)

Additional Commissioner (Export)
Customs House, Mundra

F.No. GEN/SHED/Misc/261/2024-Docks Exam Dated:- 05-08-2024

BY SPEED POST

To,
M/s Promonant Export Pvt. Ltd.,
Branch Sr. No.0, 52, Duo Marvel Layout,
Yelahanka, Bengaluru Urban,
Bangalore, Karnatka-560064

Copy to:- (1) The Deputy Commissioner(TRC)/RRA /Review
Section/EDI/Guard File. ✓ ✓



