



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
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A	File No.	CUS/APR/BE/SAO/37/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/83/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	05.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Sween Impex, Shop No.F-11,First Floor, Neptune Tower,Kalavad Road, Opp. Jalaram Petrol Pump, Revenue Survey No.454/1-2,Plot No. 1 to 6, Rajkot-360007
F	DIN No.	20240771MO000000DAA0

1. यह अपील आदेश संबंधित 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, हुड़को 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/- 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 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, where penalty alone is in dispute.

Brief facts of the case:

M/s. Sweene Impex, Shop No.F-11,First Floor,Neptune Tower, Kalavad Road, Opp. Jalaram Petrol Pump, Revenue Survey No.454/1-2, Plot No. 1 to 6,Rajkot-360007(IEC-FTKPS5891B) filed Bill of Entry No.4046526 dated 17.06.2024 for import of "Distillate Oil" under CTH-27101961.

The details declared in the Bill of entry are as under:

(Amount in
Rs.)

Bill of Entry No. & Date	Description of goods	Qty. Kgs	Ass. declared	Value	Duty Payable declared
4046526 dated 17.06.2024	Distillate Oil (CTH-27101961)	192360	Rs.83,76,218/-	Rs.20,51,336/-	

2.1 The examination of the cargo imported vide Bill of Entry 4046526 dated 17.06.2024 was done under the supervision of the Supdt.(DE) in the presence of CB representative and sample was drawn vide Test Memo no. 1222848 dated 22.06.2024 and forwarded to CECL, Vadodara lab for testing purpose. The goods/ cargo of the said bill of entry was stuffed in the 10*20 containers. The said Bill of Entry has been pushed to PAG from FAG with following remarks by the appraising officer; -

"Therefore, it appears that the goods were mis-declared in description and were found to be similar to Mixed Hydrocarbon Oil (MHO), prima facie"

2.2. The CECL, Vadodara vide Test Report Lab No. RCL/MUNDRA/IMP/1896/25.06.2024 dated 28.06.2024 submitted his report stating that-

"The sample as received is in the form of pale yellowish oily liquid. It is composed of mixture of hydrocarbon more than 70% by wt. having following constant.

Density at 15°C = 0.8254 gm/ml

Flash Point (Abel) = 32.5 °C

K.V. at 40 °C = 2.517 Cst

Ash Content = Nil

Water Content = Nil

Sediment Content = Nil

<i>Distillation range:-IBP</i>	= 126.0 °C
<i>FBP</i>	= 387.0 °C
<i>Sulphur Content</i>	= 0.137%

On the basis of above tested parameters sample u/r does not meet the requirements of Distillate Marine Fuel (IS:16731:2019) "

The sample u/r does not meet the requirement of light oil and preparation,solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), kerosene(IS:1459:2018,IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automative Diesel Fuel(IS:1460:2017), HFHSD (IS:16861:2018), transformer oil, Biodiesel, Diesel fuel Blend B6-B20(IS:16531:2016), Gas Oil(IS:17789:2022), Vacuum Gas Oil(IS:17792:2022), kerosene Intermediate(IS:17793:2022)

Sealed remnant sample returned herewith"

2.3 From the test report received from CECL, Vadodara it appears that the lab examiner has categorically states the sample doesn't meets the parameters of Distillate Distillate Marine Fuel (IS:16731:2019) and the Lab Examiner also states that the sample doesn't meets the parameters of canalized items. However, the goods are neither reported to be waste oil nor to be hazardous in nature; further, going through the tested parameters, it appears that the parameters are similar to specification of Mixed Hydrocarbon Oil (MHO), which merits classification under CTH 27101990.

2.4. Whereas, the description of CTH 27101990 as per ITC-HS is as below:

2710 PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS

- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:

271019 -- Others
27101990 --- Other

2.5 Whereas, the importer while filing the Bill of Entry has declared their goods as 'Distillate Oil' classifying the same under CTH-27101961. The description of CTH 27101961 as per ITC-HS is as below:

2710 PETROLEUM OILS AND OILS OBTAINED FROM BITUMINOUS MINERALS, OTHER THAN CRUDE; PREPARATIONS NOT ELSEWHERE SPECIFIED OR INCLUDED, CONTAINING BY WEIGHT 70% OR MORE OF PETROLEUM OILS OR OF OILS OBTAINED FROM BITUMINOUS MINERALS, THESE OILS BEING THE BASIC CONSTITUENTS OF THE PREPARATIONS; WASTE OILS

- Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oils:

271019 -- Others

--- Fuel (Class F) or Marine Fuels Confirming to standard IS 16731

27101961 -----Distillate Oil

3.1. In view of above, it is evident that the importer at the time of filing of BE No. 4046526 dated 17.06.2024 has mis-declared their goods as "Distillate Oil" classifying the same under CTH-27101961 which is actually Mix Hydrocarbon Oil falling under CTH-27101990 (others). However, both the declared item and the item found in the cargo are free for import and also attracts similar duty rates, therefore, there is no differential duty issue involved. However, the importer has mis-declared the description and classification of the goods and contravened the provisions of Section 46 of the Customs Act, 1962, thus, the goods imported under above Bill of Entry No. 4046526 dated 17.06.2024 are liable for confiscation under Section 111(m) of the Customs Act, 1962.

3.2 Further, the importer is involved in improper importation of goods which are liable for confiscation on the ground of mis declaration of Description and CTH; therefore, the importer rendered themselves liable to the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962

4 Relevant Legal Provisions:

4.1 Section 46. Entry of goods on importation:

(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, relating to the imported goods.

[(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.]*

4.2 Section 111. Confiscation of improperly imported goods, etc. – *The following goods brought from a place outside India shall be liable to confiscation:-*

(a) --

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(m) 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

4.3 Section 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, 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 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;*
- 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;

SHOW CAUSE NOTICE & PERSONAL HEARING

5. The importer in their query reply dated 02.07.2024 as per EDI system has submitted they do not want personal hearing and show cause notice in the matter and gave their consent to re-assess the said bill of entry as per existing rules & regulations.

DISCUSSION AND FINDINGS

6.1. M/s. Sween Impex, Shop No.F-11,First Floor,Neptune Tower, Kalavad Road, Opp. Jalaram Petrol Pump,Revenue Survey No.454/1-2, Plot No. 1 to 6, Rajkot-360007 has imported "Mixed Hydrocarbon Oil" falling under Chapter 27101990" vide bill of entry no. 4046526 dated 17.06.20274 by mis-classifying the same as "Distillate Oil" and mis-declaring CTH as 27101961.

6.2. I find that query has been raised to the importer in EDI system informing them the mis-declaration observed during examination/assessment as per the Lab Report. Whereas, the importer has informed that they do not want any personal hearing and show cause notice in the matter and gave their consent to re-assess the said bill of entry as per existing rules & regulations. Therefore, i find that the principle of natural justice has been complied with, hence, I take up the issue for adjudication as per the available

records.

6.3. In the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. Whereas, the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, *ibid* 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 statutory obligation cast upon him and made wrong declaration about the CTH and declaring applicable duty on the imported goods. Therefore, the imported goods are required to be re-classified under CTH-27101990 and the said goods are liable for confiscation under Section 111(m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112 of Customs Act 1962.

6.4. Whereas, Section 125(1) of the Customs Act, 1962 provides that: *"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the 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 redemption fine as the said officer thinks fit".*

6.5. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject to clearance of goods for Home Consumption with condition to re-assessment of the goods as proposed.

6.6. I further find that as per the records put before me, the goods found during the first check examination as per test report is freely importable and the goods as declared by the importer and the goods found in the cargo, attracts similar duty structure, hence, I don't find any substantial malafide intention at the end of the importer, therefore, I am not inclined to impose harsh penalties or heavy redemption fine on the confiscated goods.

7. In view of the aforesaid discussions and findings, I pass the following

order:

ORDER

(i) I order to reject the declared classification i.e. 27101961 of the goods imported vide Bill of Entry No. 4046526 dated 17.06.2024 and order to classify the imported goods under CTH 27101990 and order to reassess as per Section 17 of the Customs Act,1962.

(ii) I order for confiscation of the goods imported vide Bill of Entry No. 4046526 dated 17.06.2024 declared as "Distillate Oil (CTH-27101961)" weighing 192360/- Kgs having Assessable Value of Rs. 83,76,218 (Rupees Eighty Three Lakhs Seventy Six Thousand and Two Hundred Eighteen Only) imported vide Bill of Entry No.4046526 dated 17.06.2024 under Section 111(m) 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. 6,00,000/- (Rs. Six lakh Only) under Section 125 of the Customs Act, 1962.

(iii) I impose a penalty of Rs. 5,000/- (Rs.Five Thousand only) on the importer M/s. Sween Impex under Section 112 (a)(ii) of the Custom Act, 1962.

8. 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.

Signed by
Arun Kumar

Date: 05-07-2024 13:19:37 (Arun Kumar)
Additional Commissioner
Import Section, CH Mundra

F.No. I/2107921/2024

Date:05-07-2024

To,
M/s. Sween Impex,
Shop No.F-11,First Floor,
Neptune Tower,Kalavad Road,
Opp. Jalaran Petrol Pump,
Revenue Survey No.454/1-2,Plot No. 1 to 6,
Rajkot-360007

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. Guard File.