



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
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A	File No.	CUS/APR/MISC/3781/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/36/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	08.05.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Noble Industrial Services 18 Ambika Market First Floor Station Road, Jalna-431203
F	DIN No.	DIN – 20240571MO000000F2EF

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),
 7 वीं मंजिल, मूदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
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 (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 alone is in dispute.

DIN-20240571MO000000F2EF

Brief Facts

M/s. Noble Industrial Services 18 Ambika Market, First Floor Station Road, Jalna, 431203 (IEC-AAMHP2874F) (hereinafter referred to as 'the importer' for the sake of brevity) has filed BE No. 2931153 dated 08.04.2024 for import of 188.240 MTS of 'Mixed Hydrocarbon Oil' valued at Rs. 58,01,933/- declaring the said goods under CTH-27101990.

The details of the goods declared in the Bill of Entry are as under:-

(Amount in Rs.)				
Bill of Entry No. & Date	Description of Goods declared	Qty. in Kgs.	Assessable Value	Duty payable declared
2931153 dated 08.04.2024	Mixed Hydrocarbon Oil (CTH-27101990)	188240	58,01,933/-	1420893/-

2.1 Whereas, the said BE was under assessment in Faceless Assessment Group (FAG); wherein, the FAG officers have given first check for the consignment covered under the said BE. In compliance of the first check examination, the Docks Officer in presence of the Customs Broker's representative has examined the cargo and drawn Representative Sample vide Test Memo No. 1210827 dated 09.04.2024 and representative samples have been sent to CECL, Vadodara under for testing purpose to confirm following;

"Nature, Composition, Description of Goods, Initial Boiling Point, Final Boiling Point, Content of Base Oil, % of Volume (Including LOSS0029), Flash Point, Transformer Oil, Other than Diesel, Petrol, light oil & preparations, Solvents 60/80, 50/120, 145/205, 125/240 (IS 1745:2018), Aviation Gasoline (IS:1604), High Speed Diesel Fuel (IS: 1459/1571), High Speed Diesel Fuel Intermediate (IS 17793), Gas Oil (IS 17789:2022), Vacuum Gas oil (IS 17792:2022), LDO (IS 15770:2008), Automotive diesel fuel not containing Bio Diesel (IS 1460:2017), Diesel Blend (IS 16531:2016), HFHSD FUEL (IS:16861), Motor Spirit/Gasoline (IS: 2796, IS 17021, IS 17586 or IS 17076), Diesel Fuel Blend (B6 to B20), Confirming to (IS 16531)

2.2. The Chemical Examiner Gr-I, CECL, Vadodara vide Lab No.RCL/Mundra/Imp/255/12.04.2024 has submitted his report as under;

“The Sample as received is in the form of pale Yellowish Oily Liquid. It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant.

<i>Density at 15°C</i>	<i>= 0.8345 g/ml</i>
<i>Flash Point (PMCC)</i>	<i>= 98.6 °C</i>
<i>K.V. at 40 °C</i>	<i>= 3.85 Cst</i>
<i>Ash Content</i>	<i>= Nil</i>
<i>Water Content</i>	<i>= Nil</i>
<i>Sediment Content</i>	<i>= Nil</i>
<i>Distillation range:-IBP</i>	<i>= 213.8 °C</i>
<i>85% Distilled at temp</i>	<i>= 330.2 °C</i>
<i>95% Distilled at temp</i>	<i>= 348.6 °C</i>
<i>FBP</i>	<i>= 351.0 °C</i>
<i>Sulphur Content</i>	<i>= 34.36 ppm</i>
<i>Copper Strip Corrosion for 3h at 100°C</i>	<i>= Not Worse than No. 1</i>
<i>Pour Point</i>	<i>= -10</i>
<i>Cetane index</i>	<i>= 57.3</i>

On the basis of above tested parameters sample u/r meets the requirements of High Flash High Speed Diesel Fuel as per IS 16861-2018.

2.3. From the above report CECL, Vadodara, it is found that the goods are other than what is declared. The CECL Vadodara in its report has given conclusion that goods are *High Speed Diesel Fuel as per IS 16861-2018*. Therefore, the imported cargo merits classification under CTH No. 27101949, whereas, the same were mis-declared and mis-classified as “Mixed Hydrocarbon Oil” by declaring wrong classification thereof under CTH 27101990.

3. The goods i.e. *High Speed Diesel Fuel as per IS 16861-2018 falling under CTH 27101949* are restricted for import and allowed to be imported by the State Trading Enterprises only. Whereas, Para 2.01 of the Foreign Trade Policy 2023, notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992, prescribed as follow:

“(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 by clicking on 'Downloads' at <http://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."

3.1 As per the Schedule I of the Indian Trade Classification (HS) Classifications on Import Items 2022, Section V, Chapter 27, Import Policy for the *High Speed Diesel Fuel (IS:16861:2018)*, as covered under Customs Tariff Heading and Tariff Item No. 27101949 is "State Trading Enterprises" with remarks that "*Import as per policy condition (5) of chapter 27.*"

3.2. Para 2.21 of the Foreign Trade Policy 2023, which was notified under Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 specified as follow:

- 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 entity to import or export any of the goods notified for exclusive trading through STEs.*

3.3. Further to the above, the Policy condition (5) prescribed at Schedule

I of the ITC (HS) Classifications on Import Items 2015-2020, Section V, Chapter 27 is specified as follows:

“(5) Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of MoPNG Resolution No. P-23015/1/2001-MKT dated 08.03.2002 for products excluding gasoline conforming to standard IS 2796 (ITC HS Code: 27101241) hand 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. P-12029(11)/2/2018- OMC-PNG dated 08.11.2019].”

3.4. The list of the State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2015-2020 is as follow:

“S. No. STATE-TRADING ENTERPRISES

1. *Food Corporation of India (FCI)*
2. *State Trading Corporation (STC)*
3. *Indian Oil corporation (IOC)*
4. *Bharat Petroleum Corporation Ltd. (BPCL)*
5. *Hindustan Petroleum Corporation Ltd. (HPCL)*
6. *Oil and Natural Gas Corporation Ltd. (ONGC)*
7. *Minerals and Metals Trading Corporation (MMTC)*
8. *Indian Potash Ltd. (IPL)*
9. *National Dairy Development Board (NDDB)*
10. *National Cooperative Dairy Federation (NCDF)*
11. *National Agriculture Cooperative Marketing Federation of India Ltd (NAFED)*
12. *Projects and Equipment Cooperation of India Ltd.(PEC)*
13. *Spices Trading Corporation Limited (STCL)*
14. *Central Warehousing Corporation (CWC)*”

3.5. Further to the above, since the *High Speed Diesel Fuel* in the total quantity in possession exceeding the specified quantity falls under the category of “Petroleum Class B” and the import, storage and handling of the products falling under “Petroleum Class B” are governed by the

provisions of the Petroleum Act, 1934 (30 of 1934).

As per the Petroleum Act, 1934-

“Petroleum Class “B” means petroleum having a flash point of 23° C and above but below 65° C. (e.g. HSD, SKO, MTO etc.)”

“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 of the Act and the Rules made thereunder.”

“Petroleum” means any liquid hydro-carbon or mixture of hydro-carbons and any inflammable mixture (liquid, viscous or solid) containing any liquid hydro-carbon;

3.6. From the above, it appeared that the impugned goods i.e. *High Speed Diesel Fuel (IS:16861:2018)* properly classifiable under CTH 27101949 is restricted in nature as per Foreign trade Policy and have been imported by the said importer by mis-declaring and mis-classifying the same as ‘Mixed Hydrocarbon Oil’ under CTH-27101990.

4 . As discussed above, as the goods are restricted for import and the importer do not possess the status of State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2023; hence, the subject goods appeared prohibited in nature and the consignment covered under the said Bill of Entry appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962.

5. Whereas, from the above it appears that, the importer had mis-declared the description of the goods and the CTH as “Mixed Hydrocarbon Oil”- under CTH “27101990” imported vide Bill of Entry No. 2931153 dated 08.04.2024 and imported restricted/prohibited goods i.e. *High Speed Diesel Fuel (IS:16861:2018)*” properly classifiable under CTH 27101949.

6. Whereas, in view of the above, it appears that, the goods imported vide Bill of Entry no. 2931153 dated 08.04.2024 appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act,

1962 and the importer appeared to be liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

7. Relevant Legal Provisions:

7.1 Section 2(25) defined the terms "Import Goods":

"Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption."

7.2. Section 17. Assessment of duty. –

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

7.3 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.]*

7.4. Section 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a 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 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;

(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;

7.5. 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

8. The importer vide letter dated 18.04.2024 has requested to waiver of SCN & PH; however, in the same letter the importer also submitted to allow them re-export the goods under applicable fine & penalty stating that they do not did anything with malafide intention. Therefore, considering the request of the importer and following the principle of natural justice no SCN is issued in the matter

DISCUSSION AND FINDINGS

9. M/s. Noble Industrial Services 18 Ambika Market, First Floor Station Road, Jalna, 431203 has imported “*High Speed Diesel Fuel*” to be classified under Chapter 27101949 vide Bill of entry no. 2931153 dated 08.04.2024 by mis-classifying the same as ‘Mixed Hydrocarbon Oil’ and mis-declaring CTH as 27101990.

9.1 In the instant case, I find that the importer had filed the bill of entry with incorrect particulars by mis-declaring the description as Mixed Hydrocarbon Oil and CTH as 27101990; whereas, under first check examination the goods covered under the subject cargo found to be “*High Speed Diesel Fuel*” classifiable under Chapter 27101949. The importer has approached this office with request of re-import of goods stating that there is no malafide intension after receipt of the sample test report and after having learnt that the goods are restricted in nature and at no time before the receipt of test report the importer declared the fact to the department that the cargo received is other than the declared one. Therefore, it appears that the admittance of supplier regarding mis-sent of goods by supplier and happening of things without malafide intension are clearly an afterthought.

9.2 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, goods are restricted for import and the importer do not possess the status of State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2023; hence, the subject goods appeared prohibited in nature and the consignment covered under the said Bill of Entry appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962. Therefore, the imported goods are required to be re-classified under CTH-27101949 and the goods having Assessable Value of Rs. 58,01,933/- (Fifty Eight Lakh One Thousand Nine Hundred Thirty Three only) are liable for confiscation under Section 111(d) & 111 (m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112 a (i) of Customs Act 1962.

9.3. I find that the importer vide letter dated 18.04.2024 has requested to re-export of the goods to their overseas supplier. I find that the option of re-export can be availed by the Importer after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962. 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".

9.4. 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 and request of the importer for re-export of the goods, I find it appropriate to grant an option to pay redemption fine in lieu of confiscation of the subject with condition to re-export of the said goods.

9.5. I further find that in the instant case as the importer has requested to re-export of the goods and the goods are not being cleared for home consumption, hence, as such the import of the confiscated goods has not been completed for home consumption and the importer is not getting the goods for sale in domestic market to earn any profit and on the other hand they have to bear the expenses for the re-export. However, as the goods are prohibited in nature as discussed in para 9.2, therefore, I hold that the importer rendered themselves for penal action and also I hold that the redemption fine should be imposed on the subject confiscated goods for the purpose of re-export.

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

ORDER

10.1 I order to reject the declared classification i.e. 27101990 of the goods imported vide Bill of Entry No. 2931153 dated 08.04.2024 and order to classify the impugned goods under CTH 27101949.

10.2. I order for confiscation of the goods imported vide Bill of Entry No. 2931153 dated 08.04.2024 declared as " Mixed Hydrocarbon Oil" weighing 188.240 MTS having Assessable Value of Rs. 58,01,933/- (Fifty Eight Lakh One Thousand Nine Hundred Thirty Three only) imported vide Bill of Entry No. 2931153 dated 08.04.2024 under Section 111(d) & 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.6,80,000/- (Rs. Six Lac Eighty Thousand Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

10.3 I impose a penalty of Rs. 3,65,000/- (Rs. Three Lac Sixty Five Thousand Only) on the importer under Section 112 (a)(i) of the Custom Act, 1962.

10.4. I also allow the importer to re-export the subject goods imported vide BE No. 2931153 dt. 08.04.2024 declared as "Mineral Hydrocarbon Oil" weighing 188240 Kgs having Assessable Value of Rs.58,01,933/-, back to the overseas supplier with condition to pay all applicable fine & penalty imposed herein. Further, as per section 125 of the Customs Act, 1962, if

the importer does not pay the fine within a period of one hundred and twenty days from the date of the order, option to redeem the said goods shall become void, unless an appeal against the said order is pending and the said impugned goods would be liable for disposal as per instructions and guidelines in CBIC Disposal Manual, 2019. The cost of destruction shall be borne by the importer.

11. 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: 08-05-2024 16:30:38 (Arun Kumar)

Additional Commissioner

Import Section, CH Mundra

To,
M/s. Noble Industrial Services
18 Ambika Market First Floor
Station Road, Jalna-431203

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 Manager, Concerned CFS, MP & SEZ, Mundra
5. Guard File.