



**OFFICE OF THE PRINCIPAL COMMISSIONER  
OF CUSTOMS  
CUSTOMS HOUSE, MP & SEZ  
MUNDRA, KUTCH-GUJARAT -370421  
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A	File No.	CUS/SHED/MISC/514/2024-Docks Examn-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	<b>MCH/ADC/AK/38/2024-25</b>
C	Passed by	<b>ARUN KUMAR ADDITIONAL COMMISSIONER CUSTOMS HOUSE, MUNDRA.</b>
D	Date of Order	<b>The importer has requested for waiver in PH/SCN vide letter dated 24.04.2024</b>
E	Noticee/Party/ Importer/ Exporter	<b>M/s MARKAP RESOURCES PRIVATE LIMITED, D214, Phase 1, Ashok Vihar, New Delhi-110052</b>
F	DIN No.	<b>20240571M00000021169</b>

1. यह अपील आदेश संबन्धित को नि:शुल्क 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, नवरांगपुरा, अहमदाबाद-380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
Having his office at 4<sup>th</sup> 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 जाएः-

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 ड्रूटि/ 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 alone is in dispute.

### **BRIEF FACTS OF THE CASE**

M/s. MARKAP RESOURCES PRIVATE LIMITED, D-214, Phase 1, Ashok Vihar, New Delhi-110052, (hereinafter referred to as "the importer") having IEC No. 0512081794, filed Bill of Entry No. 2913745 DT. 06.04.2024, under Section 46 of the Customs Act, 1962, through their CHA M/s RIBHUS GLOBAL PVT. LTD. for the clearance of goods i.e. Tyre Scrap of Loose Crumb having assessable value of Rs. 19,67,744/-under CTH 40040000 imported from M/s. ANT Resource LLC, USA under DGFT LICENCE NO. 0111003763 Dated 25.05.2022 (valid upto 02.05.2024).

**2.** The subject Bill of Entry No. 2913745 DT. 06.04.2024 has been facilitated with RMS, where assessment and examination has not been prescribed but on the verification of Seal on the container, one container was found having seal mis-match as per BL. In order to ascertain identify and nature of above-mentioned imported goods, the examination of the goods was carried out on 18.04.2024 by Docks officer at Rishi CFS, Mundra in the presence of authorized representative of importer/ Customs Broker. During physical examination of the goods, goods found as "Tyre Scrap Bales" imported from USA, violating the parameters of DGFT authorization granted to the importer which is different from "Tyre Scrap of Loose Crumb" as declared in Bill of Entry/Bill of Lading /Invoice.

**3.** The goods imported under the said Bill of Entry is Tyre Scrap of Loose Crumb whereas on examination it was found as "Tyre Scrap Bales". The importer has obtained import license for import of restricted goods as mentioned in the DGFT license number 0111003763 Dated 25.05.2022 (valid upto 02.05.2024). The Details of items sought to be imported under the License for Restricted imports under CTH 40040000 are mentioned below: -

*Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.*

*Crumb Rubber/granules having size finer than 10 mesh to 15 mesh and devoid of iron / steel & Most of the fibres.*

**4.** The above referred DGFT license no. 0111003763 Dated 25.05.2022 (valid upto 02.05.2024) does not cover the import authorization for item /goods found as "Tyre Scrap Bales". The used Tyre Scrap Bales are put in the restricted import category list and the importer has failed to produce required valid authorization permission from the Director General of Foreign Trade (DGFT).

In View of Above, the above mentioned imported goods are restricted under Para 2.31 of the Foreign Trade Policy (FTP) 2015-20 and the importer has failed to fulfil the conditions to import of restricted goods i.e "**Tyre Scrap Bales**".

**5.** In the context of this case, the following legal provisions are reproduced for reference. Relevant Legal Provisions:

**Para 2.31(II) of Foreign Trade Policy, 2023 is reads as under :**

<b>Sl. No.</b>	<b>Categories of Second-Hand Goods</b>	<b>Import Policy</b>	<b>Conditions, if any</b>
<b>I. Second-Hand Capital Goods</b>			
I(a)	i. Desktop Computers;	Restricted	Importable against Authorisation

	ii. Refurbished / re-conditioned spares of refurbished parts of Personal Computers/ Laptops; iii. Air Conditioners; iv. Diesel generating sets		
I(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
I(c)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare
I(d)	All other second-hand capital goods {other than (a) (b) & (c) above}	Free	
<b>II</b>	<b>Second Hand Goods other than capital goods</b>	<b>Restricted</b>	<b>Importable against Authorisation</b>
III	Second Hand Goods imported for the purpose of repair/refurbishing / reconditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

**Section 46: Entry of goods on importation.** – "(1) The importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(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."*

**Section 111(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;

**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,

**6.** From the forgoing facts and legal position, it appears that the Importer have imported "Tyre Scrap Bales" in Shredded Form and as per 2.31 of Foreign Trade Policy 2015-20, wherein import of Second Hand Goods other than capital goods is restricted and require import authorisation. As no import authorisation has been submitted by the Importer, the goods become prohibited and are liable for confiscation under Section 111(d) of the Customs Act, 1962.

**7.** In terms of Section 46(4) of Customs Act 1962, the Importer of any goods are required to declare correct details/particulars in Bill of Entry being filed by them. Further, in terms of Section 46(4A) of Customs Act 1962, the Importer who presents a Bill of Entry shall ensure -

- a. the accuracy and completeness of the information given therein.
- b. the authenticity and validity of any document supporting it.
- 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.

**8.** The Importer has imported goods i.e. Tyre Scrap Bales other than **Tyre Scrap of Loose Crumb** without any import authorization and thus mis-declared the goods, therefore rendered themselves liable for penal action under the provisions of Section 112(a) of the Customs Act, 1962.

#### **PERSONAL HEARING AND WRITTEN SUBMISSION**

**9.** The importer vide letter dated 24.04.2024 submitted that while filling of the bill of entry, wrong license No. 0111003763 Dated 25.05.2022 (valid upto 02.05.2024) by mistakenly uploaded by the C.B Documentation Person. Whereas the correct license details is Lic no. 0111008405 Date 03.05.2023 (Valid upto 03.11.2024), description of the goods permitted for import under this license which fall under classification CTH 40040000 is mentioned below:-

*Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.*

*Used Rubber Tyres/Tubes scrap (Multiple Cuts/Shredded/pressed Baled/ Basel No. B3080 & B3140).*

Furthermore, the importer vide letter dated 24.04.2024 have stated that they will not proceed further for Show Cause Notice and Personal Hearing in the matter and have requested to decide their matter on merits of the case and grant them permission to clear the said Cargo under correct license no.

### **DISCUSSION AND FINDINGS**

**10.** I have carefully gone through the case as well as available of records of the case. The importer vide letter dated 24.04.2024 has requested to waive the SCN and personal hearing in this matter. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. The following issues are involved in this case, which are required to be decided:

- i. Whether the impugned goods require import authorization as per para 2.31 of the Foreign Trade Policy, wherein, all second hand/used goods, other than capital goods are restricted;
- ii. Whether the impugned goods are liable for confiscation under Section 111(d) of the Customs Act, 1962;
- iii. Whether the importer is liable for penalty under Section 112(a) of the Customs Act, 1962.
- iv. Whether the license 0111008405 Date 03.05.2023 (Valid upto 03.11.2024) issued by DGFT to M/s. MARKAP RESOURCES PRIVATE LIMITED can be permitted.

**11.** I find that importer M/s. MARKAP RESOURCES PRIVATE LIMITED had imported the goods declared as "Rubber Granules" having assessable value of Rs. 19,67,744/-vide Bill of Entry No. 2913745 DT. 06.04.2024 and classified the impugned goods under ITC HS Code 40040000.

**12.** I find that the subject Bill of Entry No. 2913745 DT. 06.04.2024 has been facilitated with RMS, where assessment and examination has not been prescribed but on the verification of Seal intact on the container, there is one container found seal mis-match as per BL. In order to ascertain and identify the nature of above-mentioned imported goods, the examination of the goods was carried out on 18.04.2024 by Docks officer at Rishi CFS, Mundra in the presence of authorized representative of importer/ Customs Broker. During physical examination of the goods, goods found as "Tyre Scrap Bales" imported from USA, violating the parameters of DGFT authorization granted to the importer which is different from "Tyre Scrap of Loose Crumb" as declared in Bill of Entry/Bill of Lading /Invoice.

**13.** I find that the goods imported under the said Bill of Entry is Tyre Scrap of Loose Crumb whereas on examination it was found as "Tyre Scrap Bales". The importer has obtained import license for import of restricted goods as mentioned in the DGFT license number 0111003763 Dated 25.05.2022 (valid upto 02.05.2024). The Details of items sought to be imported under the License for Restricted imports under CTH 40040000 are mentioned below: -

*Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.*

*Crumb Rubber/granules having size finer than 10 mesh to 15 mesh and devoid of iron / steel & Most of the fibres.*

**14.** In view of above, I find that the above referred DGFT license no. 0111003763 Dated 25.05.2022 (valid upto 02.05.2024) does not cover the

import authorization for item /goods found as "Tyre Scrap Bales". As the used Tyre Scrap Bales are put in the restricted import category list and the importer fails to produce required valid authorization permission from the Director General of Foreign Trade (DGFT).

In View of Above, the above mentioned imported goods are restricted under Para 2.31 of the Foreign Trade Policy (FTP) 2015-20 and the importer has failed to fulfil the conditions to import of restricted goods i.e "Tyre Scrap Bales".

**15.** I find that the above mentioned imported goods are restricted under Para 2.31 of the Foreign Trade Policy (FTP) 2015-20, wherein, all Second Hand / Used Goods, other than capital goods are restricted and requires an Authorization for import. However, the importers have not produced any authorization issued by DGFT for importation of the goods i.e Tyre Scrap Bales.

**16.** I find that the goods imported under Bill of Entry No. 2913745 DT. 06.04.2024 had been mis-declared in material particular in as much as the said Bill of Entry had been filed on the basis of wrong description.

**17.** In light of these acts of mis-declaration of value, I find that the subject import goods i.e. " Tyre Scrap Bales ", are liable for confiscation as per the provisions of Section 111(d) of Customs Act, 1962.

**18.** As the impugned goods are found to be liable for confiscation under Section 111(d) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation or otherwise.

The Section 125 ibid reads as under:-

**“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this 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 1/or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.”**

**18(i).** 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 adjudging the case which has to be exercised in view of facts and circumstances of the case.

**18(ii).** Therefore, considering the facts of the case I find it appropriate to grant an option to pay redemption fine under Section 125(1) of the Customs Act, 1962, in lieu of confiscation of the subject goods as the goods fall under restricted category as per the Sr. No. II of Para 2.31 of the Foreign Trade Policy (FTP) 2015-20, (wherein, all Second Hand / Used Goods, other than capital goods are restricted and requires an Authorization for import) and the importers have not produced any authorization issued by DGFT for importation of the goods i.e Tyre Scrap Bales.

**19.** I allow to use License No. 0111008405 Date 03.05.2023 (Valid upto 03.11.2024) issued by DGFT and MOEF No 23-259/2014-HSMD instead of License No. 0111003763 Dated 25.05.2022 (valid upto 02.05.2024) declared in

the above said Bill of Entry No. 2913745 DT. 06.04.2024 on the condition of fulfilment of Redemption Fine & Penalty imposed on the importer.

**20.** I find that the importer has contravened the provisions of the Import Policy as they could not produce valid license for importation of the impugned goods i.e. Tyre Scrap of Loose Crumb and hence mis-declared in terms of description of the goods and violation of Foreign Trade Policy (FTP) 2015-20. Thus, I find that by the act of omission and commission on the part of the importer, the subject imported goods is liable for confiscation under Section 111(d) of the Customs Act, 1962. For the said deliberate act, I find that the importer M/s. MARKAP RESOURCES PRIVATE LIMITED (IEC 0512081794) is liable for penalty under Section 112(a) of the Customs Act, 1962.

**21.** In view of the above discussion and findings, I pass the following order:

**ORDER**

- i. I reject the declared description of the goods i.e. Tyre Scrap of Loose Crumb imported vide Bill of Entry No.2913745 DT. 06.04.2024 filed by M/s. MARKAP RESOURCES PRIVATE LIMITED having IEC No. 0512081794 and order to re-determine it as "Tyre Scrap Bales" having assessable value of Rs. 19,67,744/-.
- ii. I order for confiscation of goods re-determined as " Tyre Scrap Bales" under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine of Rs. 2,10,000/- (Rs. Two lac Ten Thousand Only) under section of 125 of the Custom Act 1962.
- iii. I impose a penalty of Rs. 90,000/- (Rs. Ninety Thousand Only) on M/s. MARKAP RESOURCES PRIVATE LIMITED (IEC 0512081794) , under Section 112(a)(i) of the Customs Act, 1962 for the reasons mentioned above.

**22.** This order is issued without prejudice to any other action that may be taken in respect of the 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.

  
(Arun Kumar)  
Additional Commissioner, Customs  
Customs House, Mundra

**To,**

MARKAP RESOURCES PRIVATE LIMITED,  
D-214, Phase 1, Ashok Vihar, New Delhi-110052

**Copy to:**

1. The Dy. Commissioner of Customs, RRA, Mundra Customs.
2. The Dy. Commissioner of Customs, TRC, Mundra Customs.
3. CHA M/s. RIBHUS GLOBAL PVT. LTD.
4. The Manager, Concerned CFS, AP & SEZ, Mundra