

DIN 20240571MO0000515546

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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Brief facts of the Case:

1.1 M/s Panila Chem Pvt. Ltd. (IEC : 2417503646 having registered address at Bhayani Skyline, 7th Floor, Opposite Joggers Park, Atabhai Road, Bhavnagar – 364001 has filed a Shipping Bill No. 7688841 dtd. 20.02.2024 for export of goods namely A A Industrial Solvent (hereinafter referred as impugned goods for the sake of brevity).

1.2 Whereas the importer has self-assessed the goods and classified the same under HSN Code 3814 0010 for the impugned goods destined to M/s Sakata INX (Bangladesh) Private Limited having quantity of 13.44 Metric Tonne at the rate of 1180 US dollar per metric tonne in stuffed in self-sealed container no. ECNU2275158 through invoice number 001CD0705 dtd. 20.02.2024 (RUD – 1). The goods were having declared FOB value of Rs. 12, 15, 244.8/- and claimed drawback of Rs.14, 583/-.

1.3 Whereas, during the course of verification of Shipping Bill, a query in the EDI system was raised by the Deputy Commissioner, Export Assessment, Custom House, Mundra. The query given to the exporter was 'What is the composition of the product.' The exporter through EDI portal has replied 'Documents uploaded in e-sanchit' and also submitted copies of analysis report of the impugned goods via e-mail. The exporter has submitted the certificate of analysis (RUD – 2) and Material Safety Data Sheet (RUD – 3).

1.4 Whereas, the export assessment section with a apprehension that the impugned goods appears to be 'un-denatured Ethyl Alcohol' falling under HSN – 2207 2000 decided for testing of the impugned goods in order to arrive at the actual classification of the goods. Thereafter the docks examination section was requested (RUD – 4) that drawal of sample from the self-sealing container containing the impugned goods and forwarding the same to CRCL, Kandla in order to ascertain the composition of the goods.

1.5 Whereas, the representative sealed sample vide Test Memo No. 108/07.03.2024 was forwarded to CRCL, kandla and the Chemical Examiner upon testing of the same has given the report vide Test report No. 12360 dtd. 12.03.2024 (RUD – 5) as follows:

Report : The sample as received is in the form of clear colourless liquid. It is mainly composed of Ethyl Alcohol together with small amount of Ethyl Acetate.

Technical Opinion

% composition:

Ethyl Alcohol – 93.79 %

Ethyl Acetate – Balance

It is other than undenatured Ethyl Alcohol.

1.6 Whereas, upon receipt of the report from the CRCL, Kandla the export assessment section vide its email dtd. 14.03.2024 (RUD – 6) had sought a clarification report from the CRCL that whether the composition of the goods is denatured or otherwise. In response to the same, CRCL has submitted a reply dtd. 14.03.2024 (RUD – 7) informing the following:

"As per BIS Standard IS-4117, under the category of Specially Denatured Alcohol, there are two designations such as Designation 6 and 6a.

under the Denaturant Designation - 6: Denaturant Ethyl Acetate 1 litre per 100 litre of Alcohol &;

under the Denaturant Designation - 6a: Denaturant Ethyl Acetate 5 Litre per 100 Litre of Alcohol.

And hence the composition of the sample as per the test report (12360/08-03-2024) issued on 12-03-2024 agrees with the second category (6a), that is minimum 5 Litre of Ethyl Acetate per 100 litre of Alcohol. So, in light of above it may be considered as Specially Denatured Alcohol under the denaturant designation-6a"

1.7 Whereas, upon the receipt of the clarification report from CRCL, the Export Assessment Section had taken a view that the exporter has mis-declared the goods and the same are liable for confiscation under relevant provisions of the Customs Act, 1962.

1.8 Whereas, the Export Assessment section has forwarded the matter to SIIB for investigation of the present and the past consignment of the exporter pertaining to impugned goods.

2. Investigation :

Summons

2.1 Whereas, considering the nature of irregularities made by the exporter in the matter, a summon dtd. 03.04.2024 (RUD - 8) under the provisions of Section 108 of the Customs Act, 1962 was issued to the director of M/s Panila Chem Limited for tendering the statement in the matter and also to produce documents in support of the manufacture and uses of the impugned goods.

Statement

2.2 Whereas, the statement of Shri Pankaj Nagindas Bhayana, director of M/s Panila Chem Ltd. was recorded on 06.04.204 (RUD - 9) wherein he inter-alia stated :

- He is the director of M/s Panila Chem Ltd. since 2017 and he looks after finance and general administration.
- they have been exporting the impugned goods since last 03 years.
- that A A Industrial solvent as declared in shipping bill, invoice packing list and other documents is Absolute Alcohol Industrial Solvent.
- that the firm imports denatured ethyl alcohol from USA to Pipava Port. The denatured ethyl alcohol is with 5 ppm bitterant and it is further denatured with 1% ethyl acetate as well as 50 ppm bitterant.
- that bitterant is a chemical used for giving bitter taste to the denatured alcohol and the same is used as per the prohibition rules issued by the prohibition and excise department of government of Gujarat State.
- that the composition of Denatured ethyl alcohol, ethyl acetate and bitterant is 98.95%, 1 % and 0.05 % respectively.
- that after the mixture of denatured ethyl alcohol, ethyl acetate and bitterant, sampling is done in the presence of custom officer and sample is forwarded to CRCL, Vadodara.
- that after the receipt of the report from CRCL, Vadodara and assessment of bill of entry, the firm files X-bond bill of entry as per their requirement.
- that after the goods are released from the customs, the material is unloaded in the storage tank is taken to the feed tank in plant known as Molecular Sieve Dehydration(MSDH) removing the moisture using heating by thermic fuel. Thereafter we remove Higher alcohols (also called Fusel oil) by passing it through columns in our plant. Subsequently we add solvent 6 % ethyl acetate to get final product Absolute Alcohol Industrial Solvent.
- that they do agree with the lab report dtd. 12.03.2024 of CRCL, kandla for the impugned goods, however they do not agree with the opinion that the impugned goods falls under 6(a).
- that they add 6% ethyl acetate as a solvent to get their final product as ethyl acetate is most favourable for ink industries for their customers.
- that they have classified the goods under 3814 inspite of specific CTH 2207 because the composite of organic solvents falls under 3814.

Rules of Interpretation

2.3 As specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), Classification of goods in this Schedule shall be governed by the following principles.

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Classification

2.4 The exporter has classified the goods under chapter 38 of the Custom Tariff Act, 1975. The Chapter 38 of Section – VI of the Custom Tariff Act, 1975 deals with Miscellaneous Chemical Products. The notes 1 of the same is produced below:

SECTION-VI**CHAPTER-38**

Chapter 38
Miscellaneous chemical products

NOTES:

1. This Chapter does not cover:
 - (a) separate chemically defined elements or compounds with the exception of the following :
 - (1) artificial graphite (heading 3801);
 - (2) insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up as described in heading 3808;
 - (3) products put up as charges for fire-extinguishers or put up in fire-extinguishing grenades (heading 3813);
 - (4) certified reference materials specified in Note 2 below;
 - (5) products specified in Note 3 (a) or 3 (c) below;

2.4.1 Upon perusal of the note 1 of the chapter note wherein it has been specified that 'that this chapter does not cover separate chemically defined elements or compounds'; in the instant matter the exporter has classified the goods under HSN Code 3814 0010.

The tariff reading of the same is as below:

3814	ORGANIC COMPOSITE SOLVENTS AND THINNERS, NOT ELSEWHERE SPECIFIED OR INCLUDED; PREPARED PAINT OR VARNISH REMOVERS
3814 00	- <i>Organic composite solvents and thinners, not</i>

SECTION-VI**CHAPTER-38**

(1)	(2)	(3)	(4)	(5)
<i>elsewhere specified or included; prepared paint or varnish removers :</i>				
3814 00 10	--- Organic composite solvents and thinners, not elsewhere specified or included	kg.	10%	-
3814 00 20	--- Prepared paint or varnish removers	kg.	10%	-

Upon perusal of the tariff heading, it emerges that the HSN code 3814 refers to the 'organic composite solvents and thinners, not elsewhere specified or included'.

2.4.2 Whereas, during the course of recording of statement the exporter has submitted

a document (RUD – 10) describing the manufacturing process of the impugned goods as below:

- **TECHNICAL DESCRIPTION**

PROCESS – A: Imported denatured ethyl alcohol (ethanol) with a pungent odour, impurities, and moisture is unloaded into the raw material storage tank. This raw material is then transferred to the daily feed tank for further processing. The alcohol from the feed tank is fed into the evaporator column for the boiling of the ethanol-water mixture. The mixture is heated in the evaporator column with the help of a re-boiler, using thermal fluid from the boiler.

The vapour from this evaporator column is passed through a pair of molecular sieve beds of silica to trap water molecules in the bed. In the molecular sieve bed, water molecules are trapped while alcohol molecules pass through. At any given time, one bed is in working mode, and the second bed is in regeneration mode for the reactivation of the silica bed (adsorption process). This vapour is passed through the bed to remove water only.

After passing through the molecular sieve bed of silica, this vapour is cooled in a cooler. The cooled material is received in the plant receiver and transferred to the daily receiver. From the daily receiver, this material is transferred to bulk storage. In this procedure, we are removing water content from denatured ethyl alcohol.

PROCESS – B: Imported denatured ethanol and/or output from the MSDH section material are transferred to the daily feed tank of the PPGE plant. Diluted caustic soda lye and potassium permanganate solution are dosed into the feed tank to balance the pH of the feed to column.

Thermal heating is provided to the reboiler of the high boiler column. Vapour from the high column passes to the reboiler of Low Boiler Column 2 for heating. Vapour from the Low Boiler Column passes to the bottom of Low Boiler Column 1. After removing the

higher-boiling impurities, the material is cooled and transferred to the daily receiver. Here, we are removing higher impurities from denatured ethyl alcohol. The said material is used in the production of A. A. Industrial Solvent, A. A. Retarder, A. A Reducer.

Procedure of Denatured Ethyl alcohol is as follows:

1. We import denature ethyl alcohol from Galveston port Houston to pipava port.
2. Imported material post arrival is transferred from port to bonded warehouse tank.
3. Imported material is denatured by using BIS specified denaturant in presence of custom officers.
4. We also purchase denatured ethyl alcohol from sugar mills.
5. Examples of denaturants used by us are ethyl acetate, isopropyl alcohol and acetone.
6. Once denatured we use denatured ethyl alcohol in manufacture of various finished products namely AA INDUSTRIAL SOLVENT, AA RETARDER, AA REDUCER, ABSOLUTE ALCOHOL which are further used in manufacture of inks, pharmaceuticals, resins, perfumes, special chemicals among others.
7. The finished products are manufactured in our factory by using denatured ethyl alcohol and different types of solvents, depending upon the requirement of our buyers both domestic and foreign.
8. Examples of solvents used by us for mixing with denatured ethyl alcohol are ethyl acetate, N propyl acetate, N proponol, iso propyl alcohol, etc. The ethyl acetate is used as denaturant as well as solvent.

2.4.3 Also during the course of recording the statement, the exporter was asked that what further manufacturing is done after the imported goods is released from the customs. The exporter has given the following reply:

Q - 12. After the goods are released from Customs, what further manufacturing is done ?

Ans : The material is unloaded in the storage tank is taken to the feed tank in plant known as Molecular Sieve Dehydration(MSDH) removing the moisture using heating by thermic fuel. Thereafter we remove Higher alcohols (also called Fusel oil) by passing it through columns in our plant. Subsequently we add solvent 6 % ethyl acetate to get final product Absolute Alchohol Industrial Solvent.

Upon perusal of the submission made by the exporter, it has emerged that the exporter:

- Imports denatured ethyl alcohol from Pipavav Port.
- The imported goods are transferred from port to bonded warehouse tank.
- The imported goods are thereafter denatured using BIS specified denaturant such as ethyl acetate, isopropyl alcohol and acetone.
- Subsequently, the denatured ethyl alcohol is used in the manufacture of impugned goods i.e. A A Industrial Solvent.

Mis-classification

2.5.1 The exporter in his detailed submission has expressly mentioned that they merely add ethyl alcohol and another bitterant to get the final product i.e. Absolute Alcohol Industrial Solvent.

2.5.2 Hence, the fact becomes clear that the exporter has used the wording of the impugned goods as A A Industrial Solvent in the guise of Absolute Alcohol Industrial Solvent which is nothing else but denatured ethyl alcohol.

2.5.3 In furtherance to the above, the clarification given by the Chemical Examiner, CRCL, (RUD - 6) that the goods falls under the category of Specially Denatured Alcohol having designation 6a which corresponds to denaturant ethyl acetate 5 litres per alcohol.

2.5.4 The ethyl alcohol is generally used as solvent and also in the manufacture of a large scale of products such as polyethylene, acetic acid, butyl alcohol, styrene, butadiene etc. It may be used in the form of rectified spirit or ordinary denatured spirit.

Specially Denatured Alcohol is composed of alcohol and specified denaturants that may be readily removed by simple chemical processes. While specially denatured alcohol is not fit for human consumption by virtue of the denaturants used to denature the product, it can, through certain recovery processes, be made potable. For such reasons, its use is controlled through the registration of users.

2.5.5 The BIS Standard IS - 4117 : 2008 Alcohol Denaturants – specification (RUD - 11) stipulates the essential requirements as well as limit test for the denaturants in specially denatured alcohol.

2.5.6 The aforesaid Indian Standard provides for three Annexures namely:

ANNEX A – which provides formulae for denatured alcohol

ANNEX B – which provides for permissible end use application

ANNEX C – which provides for methods of tests for various denaturants

2.5.7 The exporter has submitted that they use ethyl acetate as denaturant as well as solvent. This fact is true that ethyl acetate appears in ANNEX A of IS 4117 : 2008 which provides formulae for denatured alcohol as well as ANNEX B of IS 4117 : 2008 which provides for permissible end use application.

2.5.8 The relevant extract is produced below:

ANNEX A
(Foreword, and Clause 4; Annex B and E-2.6)
FORMULAE FOR DENATURED ALCOHOL

Designation	Denaturant	Amount of Denaturant for 100 Litres of Alcohol	Use (Ref to Annex)
A — Completely Denatured Alcohol			
CD 1	Methyl alcohol + Ethyl Acetate	16.0 litre + 1.0 litre	B
CD 2	Isopropyl alcohol + Ethyl acetate	8.0 litre + 4.0 litre	B
CD 3	Acetone + Ethyl acetate	8.0 litre + 1.0 litre	B
CD 4	Methyl alcohol + Petroleum naphtha	6.5 litre + 1 litre	B
CD 5	Gasoline	2 to 5 litres	B
B — Specially Denatured Alcohol			
SD 1	Methyl alcohol	5.0 litre	B
SD 1a	Methyl alcohol	10.0 litre	
SD 2 ¹⁾	Benzene/Toluene	5.0 litre	B
SD 2a ¹⁾	Benzene or Toluene	1.5 litre	B
2b	Cyclohexane + Denatonium benzoate/ Denatonium saccharide	2.0 litre 4 g	B
SD 3	Acetone	8.0 litre	B
SD 3a	Acetone + Methyl isobutyl ketone	8 litre + 1.5 litre	B
SD 4 ²⁾	Acetaldehyde	1.5 litre	B
SD 5 ²⁾	Chloroform	5.0 litre	B
SD 6	Ethyl acetate	1.0 litre	B
SD 6a	Ethyl acetate	5.0 litre	B
SD 7	Formaldehyde	10.0 litre	B
SD 7a	Formaldehyde + Menthol	2.5 litre + 2.5 kg	B
SD 7b	Formaldehyde + Menthol	1.25 litre + 4.5 kg	R

2.5.9 The exporter in para 12 of his submission dated 06.04.2024 (RUD – 10) has stated that A A industrial solvent is manufactured by using denatured ethyl alcohol and after removing the moisture and impurities from the denatured ethyl alcohol they add more quantity of ethyl acetate as solvent.

From the afore-said submission made by the exporter it is clear that by adding further quantity of ethyl acetate, the exporter has placed the final product in the category of Specially Denatured Alcohol i.e. SD 6a which corresponds to 5 litres of Ethyl Acetate per 100 litres of Alcohol.

Hence, the impugned goods A A Industrial Solvents are nothing else than Denatured Ethyl Alcohol and more specifically specially denatured ethyl alcohol as pointed out by chemical examiner.

2.5.10 Moreover, the exporter in para 13 of his submission dated 06.04.2024 (RUD – 10) has stated that the A A industrial solvent is used in manufacture of ink and the Bangladesh customs also considers the same product under 3814 0010.

The end use specified in the ANNEX B of IS 4117 : 2008 has specified that formulae authorized for end use product/process of ink is 1, 1a, 3, 12, 12a, 13. The relevant extract of the Indian Standard is as below :

IS 4117 : 2008

SI No.	Formulae Authorized	Product or Process
(1)	(2)	(3)
61	3, 3a, 9, 10, 11, 12a	Hair and scalp preparations
62	1, 2a, 2b, 3, 12, 13	Hormones (processing)
63	1, 9, 10, 11, 13	Incense
64	1, 1a, 3, 12, 12a, 13	Inks
65	1a, 3, 3a, 9, 10, 11, 12, 13	Insecticides, pesticide and pesticide intermediates
66	4, 6, 14	Iodine solutions (including U.S.P. and N.F. tinctures)
67	1, 1a, 13	Laboratory reagents (for sale)
68	1, 1a, 13	Laboratory uses, general (own use only)
69	1, 3, 12	Lacquer thinners

Upon perusal of the same it has emerged that for manufacturing of ink the authorised formulae is different from that used by the exporter. Although, at this juncture, when impugned goods is neither ink nor it is to be manufactured in India, the Indian Standard does not apply.

Correct classification of the Impugned goods

2.6 The exporter has classified the goods under Chapter 38 of the Customs Tariff Act, 1975. Note 1 of the chapter 38 clearly specifies that it does not cover separate chemically defined elements or compounds.

In the instant matter, the impugned goods, infact, are defined separately under HSN code 22072000 and hence it is squarely eliminated from the purview of chapter 38 itself.

From the discussions made above it has emerged that the impugned goods i.e. A A Industrial Solvent is Denatured Ethyl Alcohol which is appropriately classifiable under HSN Code 2207 2000. The relevant extract of the Custom Tariff Act, 1975 is as below:

2207	UNDENATURED ETHYL ALCOHOL OF AN ALCOHOLIC STRENGTH BY VOLUME OF 80% VOL. OR HIGHER; ETHYL ALCOHOL AND OTHER SPIRITS, DENATURED, OF ANY STRENGTH		
2207 10	- <i>Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher:</i> --- <i>Rectified spirit :</i>		
2207 10 11	--- Concentrates of alcoholic beverages	/	150% -
2207 10 19	--- Other	/	150% -
2207 10 90	--- Other	/	150% -
2207 20 00	- <i>Ethyl alcohol and other spirits, denatured, of any strength</i>	/	5% -

2.6.1 The HSN Code 2207 20 00 pertains to ethyl alcohol and other spirits, denatured, of any strength and as has been discussed above the A A Industrial Solvent is nothing else but denatured ethyl alcohol and hence rightly classifiable in this heading.

Export Policy

2.7 Whereas, the Directorate General of Foreign Trade vide its Notification No. 29/2015-20 dtd. 28.08.2018 issued from F. No. 01/91/180/21/AM-18/EC inserted new entry of Sr. no. 115A in Chapter 27 of Schedule 2 of ITC(HS) Classification of Export &

Import Items and revised the policy of export of ethyl alcohol and other spirits, denatured, of any strength from 'free' to 'restricted'. The relevant extract of the said notification (Noti 29 dated 28.08.2018 English.pdf (dgft.gov.in)) is as below:

Directorate General of Foreign Trade

Notification No. 29 /2015-2020
New Delhi, Dated: 28 August, 2018

Subject: Export Policy of Bio-fuels.

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the export policy of biofuels under Chapter 27 of ITC (HS), 2018, Schedule – 2 (Export Policy).

2. New entries at Sl. No. 115A, 115B and 115C are inserted in Chapter 27 of Schedule 2 of ITC (HS) Classification of Export & Import Items as follows:

S.No.	Tariff Item HS Code	Unit	Item Description	Present Policy	Revised Policy	Policy Condition
115A	2207 20 00	Kg/u	Ethyl alcohol and other spirits, denatured, of any strength.	Free	Restricted	Export is permitted under license only for non-fuel purposes
115B	2710 20 00	Kg/u	Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or	Free	Restricted	Export is permitted under license only for non-fuel purposes

2.7.1 Whereas, in the instant case, the impugned goods falls under the 'restricted' category and exporter has not produced any license for the export of the same.

2.7.2 Whereas, consequent to issuance of Notification No. 29/2015-20 dated 28.08.2018 the impugned goods could only be exported with license only for non-fuel purpose. However, in the instant case the exporter attempted to export the same by way of mis-declaring the same as "A A Industrial Solvent" and classified the same under CTH 3814 0010 to avoid the restriction. However, the goods are found as 'Denatured Ethyl Alcohol' Classifiable under CTH 2207 2000 and is restricted for export. Thus, non-compliance of the existing DGFT Policy makes the goods as Prohibited and exporter has attempted to export the same by way mis-declaring and mis-classifying the same.

2.7.3 Whereas, as per the data available in EDI system, the exporter has exported the impugned goods 'A A Industrial Solvent' vide 20 shipping bills by mis-declaring and mis-classifying the same. The details of the shipment made is as below:

TABLE - A

Slno	Sb No.	Sb Dt.	Quantity	Units.	FOB.(Rs. In Lakh)	DBK. (Rs. In lakhs)	Item Description.
1	2519366	30-04-2020	64	MTS	50.95	0	A. A. INDUSTRIAL SOLVENT
2	2519845	30-04-2020	40	MTS	32.59	0	A. A. INDUSTRIAL SOLVENT
3	2551461	04-05-2020	96	MTS	77.32	0	A. A. INDUSTRIAL SOLVENT
4	2554266	05-05-2020	26	MTS	21.11	0	A. A. INDUSTRIAL SOLVENT
5	3150595	12-06-2020	18	MTS	12.77	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.AACU8701848

6	3150595	12-06-2020	18	MTS	12.73	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.AACU8701895
7	3174657	13-06-2020	18	MTS	12.68	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.FWUU3251650
8	3174657	13-06-2020	19	MTS	12.92	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.SEGU8062610
9	3174657	13-06-2020	19	MTS	12.86	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.EXFU2503302
10	3177869	14-06-2020	18	MTS	12.74	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.DKOU2501798
11	3177869	14-06-2020	19	MTS	12.93	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.SEGU8037880
12	3177869	14-06-2020	18	MTS	12.65	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.EXFU5573983
13	3177869	14-06-2020	19	MTS	12.83	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.SLZU2517219
14	3177869	14-06-2020	18	MTS	12.75	0	A. A. INDUSTRIAL SOLVENT - ISO TANK NO.EXFU5535392
15	4983715	05-09-2020	52	MTS	34.69	0	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
16	6765273	25-11-2020	16	MTS	9.83	0	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
17	6846072	28-11-2020	52	MTS	33.12	0	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
18	2292852	08-06-2021	50	MTS	37.2	0.48	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
19	2707172	26-06-2021	52	MTS	40.66	0.53	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
20	3150554	15-07-2021	52	MTS	41.08	0.53	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
21	8428134	05-02-2021	52	MTS	33.99	0	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
22	1258040	09-05-2022	26.6	MTS	26.44	0.34	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
23	7613359	20-01-2022	52.8	MTS	45.66	0.59	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
24	7627257	21-01-2022	79.2	MTS	68.45	0.89	A. A. INDUSTRIAL SOLVENT (ORGANIC COMPOSITE SOLVENTS)
25	1338852	27-05-2023	13	MTS	13.1	0.17	A. A. INDUSTRIAL SOLVENT
26	2546807	18-07-2023	13.44	MTS	12.82	0.17	A. A. INDUSTRIAL SOLVENT
27	6046710	14-12-2023	13.44	MTS	12.32	0.15	A. A. INDUSTRIAL SOLVENT
Total			935.2		719.19	3.85	

2.7.4 Whereas, the expression " Prohibited Goods" is defined in Section 2(33) of the Customs Act, 1962 meaning "any goods, the import or export of which is subject to any prohibition under the Customs Act or any other law for the time being in force, but it does not include any such goods in respect of which, the conditions subject to which the goods are permitted to be imported or exported have been complied with." The relevant extract is produced as under :

Section 2. Definitions –

In this Act, unless the context otherwise requires,

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

2.7.5 Whereas, the Act does not define the expression "Restricted Goods". But the definition of the expression "Prohibited Goods" itself contains an indication as to how the expression "Restricted Goods" has to be understood.

2.7.6 Whereas, upon perusal of the Section 2(33) of the Customs Act, 1962 depicts that even prohibited goods could be permitted to be imported or exported subject to some terms and conditions. The moment those conditions are complied with, those goods would cease to be prohibited goods. This is why the exclusion clause contained in the second part of Section 2(33) uses the expression "any such goods". Therefore, it appears that the Customs Act recognizes only two types of goods namely: (1) those that are prohibited; and (2) those that are not prohibited. The Act also recognizes the fact that even prohibited goods could be imported or exported subject to certain conditions. If those conditions are fulfilled, prohibited goods would automatically become non-prohibited goods and if those conditions are not fulfilled, the goods takes the shape of prohibited goods. In the instant matter, the impugned goods are not accompanied with a license as stipulated by the Directorate General of Foreign Trade vide its Notification No. 29/2015-20 dtd. 28.08.2018 issued from F. No. 01/91/180/21/AM-18/EC, and hence becomes prohibited goods.

2.7.7 Whereas, in the absence of the license the impugned goods have become prohibited goods. Moreover, from the year 2020 to 2024, the exporter has exported 935.2 metric tonnes of the impugned goods having declared FOB of Rs. 719.19 Lakhs and also claimed drawback of Rupees 3.85 Lakhs in certain shipments as provided in Table - A above. The exporter has made wrong and false declaration in terms of description and HSN code in the previous 20 shipping bills exported from the year 2020 to 2023 also.

Violations

3.1 Whereas, as per the provisions of Section 50 (3) of the Customs Act, 1962, the exporter shall ensure the accuracy of the information and also compliance with the restriction or prohibition, relating to the goods under this act for the time being in force. The relevant extract is produced below:

SECTION 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting [electronically] [on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed] :

[Provided that

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section 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.]

3.2. Whereas, it appears that, the exporter by resorting to mis-declaration of the goods has failed to comply with the provisions of the Section 50 of the Customs Act, 1962.

3.3. Whereas, the exporter attempts to export the said goods in contravention of the existing DGFT Policy, thus, rendered the said goods liable for confiscation under Section 113(d) of the Customs Act, 1962. Furthermore, for rendering the goods liable for confiscation, the exporter has also rendered himself liable for penal action under Section 114(i) of the Customs Act, 1962.

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation:-

.....

(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;

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77:

SECTION 114. Penalty 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;

3.4 Confiscation of Past Exports and Live Shipment

Whereas, the Section 2(19) of the Customs Act, 1962 given the definition of the export goods as follows:

Section 2. Definitions -

In this Act, unless the context otherwise requires,

(19) "export goods" means any goods which are to be taken out of India to a place outside India;

The wording 'attempt to export' in section 113 of the Customs Act, 1962 cannot be construed that the goods become liable for confiscation only when an attempt is made and not then the goods are actually exported. To interpret the said sections to mean that Section 113 can only be attracted when the goods are attempted to be exported and will have no application when goods have in fact been exported will defeat the purpose and object for which the said provisions have been introduced.

For the interpretation of the words an analogy is being drawn: An attempt to commit suicide is indeed an offense and the act of committing suicide resulting from the successful attempt may not be considered to be an offense. This is so far the simple

reason that once a person attempting to commit suicide succeeds in his attempt he places himself beyond the reach of law and no punishment is intended to be inflicted on the dead person or his heirs and legal representatives by imposing any fine or penalty, as they may in no way be liable or responsible for the said act. As can be seen that the liability of the goods to confiscation arises under Section 113, as soon as the goods are attempted to be exported and the attempt to export the goods necessarily precedes the actual export of the goods.

Whereas, the impugned goods become liable for confiscation, as soon as the attempt is made. There is no provision in the Act to suggest that this accrued liability is wiped out or extinguished with the exportation of the impugned goods. However, it is a fact that after the goods had actually been exported the liability of the goods to be confiscated may not be enforceable by actual confiscation of the goods. Personal penalty of any person who, in relation to the goods, does or omits to do any act which act or omission renders the goods liable to confiscation under Section 113 or abets the doing or omission of such an act has been provided in Section 114. This provision is attracted as soon as the goods incur the liability to confiscation under Section 113 and such liability arises when the goods are attempted to be exported contrary to any prohibition.

Whereas, it is to be noted that at the time when the goods are sought to be exported they are undoubtedly 'export goods' within the meaning of Section 2(19) of the Customs Act. The liability of personal penalty provided in Section 114 of the Act, which arises with the accrual of the liability of the goods to confiscation under Section 113 of the Act at the stage of the attempt to export the said goods, clearly remains and the said liability is capable of enforcement.

In view of the above discussion, the past export made by the exporter as mentioned in Table A and live shipment is liable for confiscation.

3.5 Recovery of drawback availed on illegitimate exports:

Whereas, as per the provisions of Section 75 of the Customs Act, 1962 (52 of 1962) and section 37 of the Central Excise Act, 1944(1 of 1944), the Customs and Central Excise Duties Drawback Rules, 2017 were issued vide notification no. 88/2017 - Customs (N.T.) dtd. 21.09.2017. Section 17 of the said Rules deals with the recovery of drawback that has been availed erroneously. The relevant extract is produced below:

17. Repayment of erroneous or excess payment of drawback and interest. -
Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).

In the instant matter the exporter has already availed drawback to the tune of Rs. 3.85 lakh by exporting goods as mentioned in Table A and the same is liable to be recovered under Section 17 of the Customs and Central Excise Duties Drawback Rules, 2017.

4. From the foregoing enquiry, it appears that:

- i. the description as well as CTH of the goods to be exported vide shipping bill no. 7688841 dated 20.02.2024 i.e. "A A Industrial Solvent" declared under CTH 3814 0010 are liable to be rejected and as the goods are found to be 'Denatured Ethyl Alcohol', hence is required to be classified under CTH 2207 2000.
- ii. the description as well as CTH of the goods already exported, vide 20 shipping bills mentioned in Table A above, i.e. "A A Industrial Solvent" declared under CTH 3814 0010 are liable to be rejected and as the goods are found to be Denatured Ethyl Alcohol', hence is required to be classified under CTH 2207 2000.
- iii. the impugned goods having weight 13.44 MTS of Denatured Ethyl Alcohol covered under Shipping Bills No. 7688841 dated 20.02.2024 having FOB value of Rs. 12,15,244/- (Rupees Twelve Lakhs Fifteen Thousands and Two Hundred Forty Four only), are liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962,

- iv. the impugned goods having declared weight of 935.2 Metric Tonnes of Denatured Ethyl Alcohol covered vide shipping bills as mentioned in Table A above having FOB value of Rs. 7,19,19,000/- (Rupees Seven Crore Nineteen Lakhs Nineteen Thousands only), are liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962,
- v. the drawback claim of Rs. 14,583 / - for the goods attempted to be exported vide Shipping Bill no. 7688841 dtd. 20.02.2024 is liable to be rejected.
- vi. the drawback already availed illegitimately of Rs. 3.85 lakhs is liable to be recovered under the provisions of Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017.
- vii. furthermore, for rendering the goods liable for confiscation under Section 113(d) and (i) of the Customs Act, 1962, the exporter M/s. Panila Chem Ltd. (IEC 2417503646) are also liable for penalty under Section 114(i) of the Customs Act, 1962.

5. Now, therefore, M/s Panila Chem Pvt. Ltd. (IEC : 2417503646 having registered address at Bhayani Skyline, 7th Floor, Opposite Joggers Park, Atabhai Road, Bhavnagar – 364001 (the exporter) are hereby called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why:

- i. the description as well as CTH of the goods to be exported vide shipping bill no. 7688841 dated 20.02.2024 i.e. "A A Industrial Solvent" declared under CTH 3814 0010 should not be rejected and as the goods are found to be 'Denatured Ethyl Alcohol', hence the same should not be classified under CTH 2207 2000.
- ii. the description as well as CTH of the goods already exported vide 20 shipping bills mentioned i.e. "A A Industrial Solvent" declared under CTH 3814 0010 should not be rejected and as the goods are found to be Denatured Ethyl Alcohol', hence the same should not be classified under CTH 2207 2000.
- iii. the impugned goods having weight 13.44 MTS of Denatured Ethyl Alcohol covered under Shipping Bills No. 7688841 dated 20.02.2024 having FOB value of Rs. 12,15,244/- (Rupees Twelve Lakhs Fifteen Thousands and Two Hundred Forty Four only), should not be confiscated under Section 113(d) of the Customs Act, 1962,
- iv. the impugned goods having declared weight of 935.2 Metric Tonnes of Denatured Ethyl Alcohol covered vide shipping bills as mentioned in Table A above having FOB value of Rs. 7,19,19,000/- (Rupees Seven Crore Nineteen Lakhs Nineteen Thousands only), should not be confiscated under Section 113(d) and (i) of the Customs Act, 1962,
- v. the drawback claim of Rs. 14,583 / - for the goods attempted to be exported vide Shipping Bill no. 7688841 dtd. 20.02.2024 should not be rejected.
- vi. the drawback already availed illegitimately of Rs. 3.85 lakhs should not be recovered under the provisions of Rule 17 of Customs and Central Excise Duties Drawback Rules, 2017.
- vii. Penalty should not be imposed upon the exporter M/s. Panila Chem Ltd. (IEC 2417503646) under the provisions of Section 114(i) of the Customs Act, 1962

6. The relied upon documents of this investigation report are as under:

Sr. No.	Particulars of the documents	RUD No.	Remarks
1	Invoice	1	Available with the noticee
2	COA	2	Available with the noticee
3	MSDS	3	Available with the noticee
4	Permission letter for drawl of sample	4	Available with the Export Assessment Group
5	CRCL Test Report	5	Available with the Export

			Assessment Group
6	E-mail to CRCL	6	Available with the Export Assessment Group
7	Clarification email from CRCL	7	Available with the Export Assessment Group
8	Summon	8	Enclosed
9	Statement	9	Enclosed
10	Submission dtd 6.4.2024 made by exporter	10	Available with the noticee
11	BIS IS – 4117 : 2008	11	Available in public domain

7. The Exporter/Noticee is further required to produce, at the time of showing cause, all the evidences upon which they intend to rely in support of their defence. They are further called upon to inform in writing to the Addl. Commissioner of Customs, Customs House, Mundra, as to whether they desire to be heard in person before the case is adjudicated. If no cause is shown within 30 days from the date of receipt of this notice or if they fail to appear for personal hearing before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidences available on record without any further reference to them.

8. This Show Cause Notice is issued without prejudice to any other action that may be taken against the Noticee under the Customs Act, 1962, or under any other law for the time being in force in India.

9. The Department reserves its rights to modify, amend or supplement this notice at any time on the basis of available / further evidences prior to the adjudication of the case and or to take into consideration any other evidences collected after issue of this Show Cause Notice and accordingly to make addendum in furtherance to this Show Cause Notice.

MUKESH KUMARI
ADDITIONAL COMMISSIONER
29-05-2024

BY SPEED POST

To,
M/s Panila Chem Pvt. Ltd.,
Bhayani Skyline, 7th Floor, Opposite Joggers Park,
Atabhai Road, Bhavnagar – 364001.

Copy to :
The Deputy Commissioner (EDI) & The Deputy Commissioner(SIIB) Customs House, Mundra.