



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
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A	File No.	CUS/APR/INV/250/2024-Gr 2-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/56/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	05.06.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Bhoomi Fertilizer and Chemical Co., 905, RK Empire, Near Mavdi Circle, 150ft Ring Road, Rajkot-360004
F	DIN No.	20240671MO000000D8EA

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 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, where penalty alone is in dispute.

Brief Facts of the case

M/s Bhoomi Fertilizer and Chemical Co. (IEC-ABCFB0360K), 905, RK Empire, Near Mavdi Circle, 150ft Ring Road, Rajkot-360004 (hereinafter referred to as 'the Importer') had filed Bill of Entry No.2723705 dated 23.03.2024 for import of goods declared as 'Super Humate Super Grade Big Shiny Flakes' under CTH-31059090 through Customs Broker M/s. Sunway Logistics, CB code ADPFS1811FCH001 (hereinafter referred as 'the CB'). The details of the Bill of Entry are as follows:-

Table-A

Bill of Entry No. & Date	2723705 dated 23.03.2024
Name of Importer IEC No. & Address	M/s Bhoomi Fertilizer and Chemical Co. (IEC-ABCFB0360K) 905, RK Empire, Nr.Mavdi Circle, 150ft Ring Road, Rajkot
Name of the supplier and address	Beijing Zhenghui Puda Technology Co.Ltd, 510, 5 th Floor, Building 4, No.1, Shangdi Tenth Street, Haidian, District, Beijing. China
CB Name & Code	M/s Sunway Logistics ADPFS1811FCH001
Bill of Lading No. & Dt.	800410036930 Date 03.03.2024
Invoice No. & Dt.	PD-BF/240306 Date 27.02.2024
Container No.	TSSU5024062
Description of Goods & CTH	Super Humate Super Grade Big Shiny Flakes, CTH-31059090
Quantity (in MTs)	28 MTs
Declared Assessable Value (in Rs.)	Rs.10,22,420/-

- On the basis of intelligence received by SIIB (Mundra), the goods imported in Container No.TSSU5024062 covered under Bill of Entry No.2723705 dated 23.03.2024 filed by M/s. Bhoomi Fertilizer and Chemical Co (IEC No.ABCFB0360K) was put on hold by SIIB for examination. Examination of the goods was carried out on dated 02.04.2024, in the presence of Shri Kanti Joshi, 'H' Card Holder of CB firm M/s Sunway Logistics and Ashok Kumar Giri, Deputy Manager Operations, All Cargo CFS, Mundra.

3. During the examination, after tallying the bottle seal with import documents, the seal was cut and on opening of the container the goods found were light brown color paper bags on which mentioned as "SUPER HUMATE – SUPER GRADE – BIG SHINY FLAKES – GROASS WEIGHT: 10.00 KGS - BATCH NO.: MINI - 2024, MADE IN PRC". These paper bags were unloaded from the container one by one, after unloading the bags the same were counted and tallied with the import documents. The net weight of the goods with packing material was 28090 Kgs. From these paper bags, few bags were randomly selected and opened, it was found that goods were small black colour shinny flakes. The importer has classified the imported goods under the CTH-31059090. To ascertain the nature, description & classification, representative samples were drawn during the examination. Representative sample was sent to CRCL, Kandla for testing vide Test Memo No. 001/24-25 dated 03.04.2024.

4. Summons was issued by SIIB (Mundra) to the importer and statement of Shri Chetan Vallabhbhai Akabari, General Manager and authorized representative of M/s.Bhoomi Fertilizer and Chemical Co, Rajkot – 360004 was recorded under Section 108 of the Customs Act,1962 on dated 10.04.2024, wherein he inter-alia stated that:-

- This firm is a partnership firm whose partners were Vallabhbhai Akabari his father and Shri Milan Mansukhbhai Thummar.
- They started the business of locally procuring fertilizers and sell them, also started to import them. They started with the import of Sulphur Bentonate and Humate and sell them to wholesalers and dealers.
- They procured Sulphur Bentonate from M/s. Sohar Sulphur LLC and Humate from Shri Lauren Chen M/s. Beijing Zehghui Puda Technology Co.Ltd, China.
- Shri Milan Mansukhbhai Thummar look after the sales of Fertilizers and himself look after the work of purchase, payments and other management.
- They had placed orders for import of Super Humate Super Grade Shiny Flakes through Shri Lauren Chen of the supplier M/s.Beijing Zhenghui Puda Technology Co, Beijing, China which had arrived per Bill of Entry No.2723705/ 23.03.2024.
- On being asked whether he had insisted to mention CTH as 31059090 or the supplier put the CTH 31059090, he stated that he

did not know the CTH as it was their import for the first time, earlier when they were procuring the Humic locally from other wholesalers, in their invoice the CTH was mentioned at 31059090, so he had mentioned the same to the supplier M/s. Beijing Zehghui Puda Technology Co.Ltd,

- He had been shown the copy of the Office of the Commissioner of Customs (Import) Special Investigation & Intelligence Branch (Import), Jawaharlal Nehru Custom House, Nhava Sheva, wherein they had issued Alert per F.No.SG/Misc-43/2015-16.SIIB (I) JNCH dated.03.07.2015 and File No. SG/MISC-19/2013-14/CIU.JNCH dated.13.07.2015 wherein it is mentioned that the goods should be classified at CTH 38089340 and shown the BDPs Customs Tariff book wherein the CTH 38089340 mentioned as Plant Growth Regulator and asked to comment, he stated that he had seen and agreed with the Alert issued by the JNCH SIIB Nhava Sheva, the goods imported vide Bill of Entry No.2723705 dated 23.03.2024 should fall under CTH-38089340 and further added that due to his ignorance he had classified the CTH as 31059090 and when asked to shipper, he also told some buyers do mention the CTH as 31059090.
- On being asked that the import B/E No. 2723705/ 23.03.2024 the goods were found in Paper Bags on which it is written as SUPER HUMATE – SUPER GRADE – BIG SHINY FLAKES – GROSS WEIGHT: 10.00 KGS - BATCH NO. : MINI - 2024, MADE IN PRC, on being asked to explain whether the supplier had made it on their own or they had asked them(Supplier) for it, he stated that he had asked the supplier to print 'SUPER HUMATE – SUPER GRADE – BIG SHINY FLAKES' and as the goods were ordered for in 10 kg bags, the Batch No.: MINI-2024 was mentioned by the Supplier M/s.Beijing Zehghui Puda Technology Co. Ltd, China.
- He had been shown the Examination Report dated.02.04.2024 which was examined in presence of Customs Broker, after reading them, he stated that the he was satisfied on the process of examination mentioned in the Examination Report.
- He further requested to release the goods at the earliest as the goods are to be dispatched / sold before summer starts.
- that the goods imported does not need testing and release the goods in CTH 38089340.
- He stated that he does not want any Show Cause Notice and further requested to allow clearance of the goods in CTH 38089340 and he

will pay duty accordingly.

5. The test report in respect of said test memo has been received and the same are reproduced below:-

Test Report	
Lab No.97-SIIB/04.04.2024	BE-2723705/23.03.2024
Test Memo No.001/24-25 dated 03.04.2024	
Sample Description -Super Humet Super Grade Big Shiny Flakes	
Report Date:- 23.04.2024	
Test Report	
Nature	The sample as received is in the form of black coloured shiny flakes of assorted sizes.
Composition	<p>It is composed of compounds containing potassium salts of Humic acids and other inorganic compounds,</p> <p>Moisture Content = 11.5% by weight</p> <p>Humic Acid Content = 65.3% by weight</p>

6. From the above report of CRCL, Kandla, it is found that the goods are other than that declared by the importer in Bill of Entry. the importer has classified the goods under CTH-31059090 (BCD@5%, SWS@10% of BCD & IGST@5%). However, as per the test report, it appears that the goods are rightly classifiable under the CTH-38089340 (BCD@10%, SWS@10% of BCD & IGST@18%) as the imported goods having Humic Acid content of 65%.

7. As per HSN of 3105 "Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg, as per test report, the representative sample were containing potassium salts of Humic acids with Humic Acid containing 65% by weight and other inorganic compounds. In the instant case, the imported goods contain only one potassium salts as there are no other fertilizing elements i.e. nitrogen and phosphorus. Therefore, the imported goods cannot be classifiable under the CTH -31059090.

8. The goods 'Super Humate Super Grade Shiny Flakes' are rightly classifiable under the CTH-38089340 (Plant Growth Regulators), as the goods has the characteristics of high humic acid content. Further, as per

Board's Circular No. 1022/10/2016-CX, dated 06.04.2016 on the subject of classification of Plant Growth Regulators, after the analysis done by the Indian Agricultural Research Institute (IARI), they had opined to be classified in CTH -3808.

9. As per the office of the Commissioner of Customs (Import), Special Investigation & Intelligence Branch (Import), Jawaharlal Nehru Custom House, Nhava Sheva's Alert per F.No.SG/Misc-43/2015-16.SIIB (I) JNCH dated 03.07.2015 and File No. SG/MISC-19/2013-14/CIU JNCH dated 13.07.2015 wherein it is mentioned that the goods should be classified under CTH-38089340.

10. In the instant case, it appears that the subject goods are not fertilizers and it is Plant Growth Regulators. The importer had classified the goods under CTH-31059090 whereas the goods are rightly classified under CTH 38089340.

11. After the change in the classification of the goods, the value of the contemporaneous import was traced of the same period, the value of the subject goods had been found to be on higher side, hence the transaction value of the subject goods is accepted.

12. Due to change in classification, the differential duty payable are as under:-

Declared Assesable Value (in Rs.)	Duty Payable				Duty Paid				Differential Duty Payable (in Rs.)
	BCD @ 10% (in Rs.)	SWS @ 10% of BCD (in Rs.)	IGST @ 18% (in Rs.)	Total Duty Payable (in Rs.)	BCD @ 5% (in Rs.)	SWS @ 10% of BCD (in Rs.)	IGST @ 5% (in Rs.)	Total Duty Paid (in Rs.)	
1022420	102242	10224	204280	316746	51121	5112	53933	110166	206580

13. In view of the above facts SIIB (Mundra) has concluded the investigation vide Investigation Report F. No. F.No.CUS/SIIB/INT/215/-2024-SIIB-O/o Pr Commr-Cus-Mundra dated 10.05.2024.

14. Recommendation based on above investigation:

- I. The importer has declared the goods as "Super Humate Super Grade Shiny Flakes" and classified the said goods under CTH-31059090

instead of correct CTH-38089340. Therefore, the imported goods covered under Bill of Entry No.2723705 dated 23.03.2024 having assessable value of Rs.10,22,420/- to be classified under CTH 38089340 instead of CTH 31059090.

- II. The importer is liable to pay differential duty amounting to Rs.2,06,580/-, therefore the said bill of entry is liable to be re-assessed under the Customs Act,1962.
- III. The imported goods valued at Rs.10,22,420/- are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- IV. The importer has rendered themselves liable to penalty under Section 112 (a) of the Customs Act, 1962.

SHOW CAUSE NOTICE & PERSONAL HEARING

15. The importer vide letter dated 17.05.2024 has requested that they don't required PH and Show Cause Notice and given acceptance that they will pay Fine and Penalty which will occurred in Adjudication of the matter. Therefore, considering the request of the importer and following the principle of natural justice no SCN issued in the matter.

DISCUSSION AND FINDINGS

16. I have carefully gone through the Investigation Report as well as facts of the case available on records. The importer vide letter dated 17.05.2024 requested for waiver of Personal Hearing and Show Cause Notice. 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 main issues are involved in Investigation Report, which are required to be decided:

- i. Whether, the goods pertaining to Bill of Entry No. 2723705 dated 23.03.2024 having assessable value of Rs.10,22,420/- containing goods as "Super Humate Super Grade Shiny Flakes" filed under CTH 31059090 should be classified under CTH CTH 38089340.
- ii. Whether, the importer is liable to pay differential duty amounting to Rs.2,06,580/- after re-assessment of the bill of entry under the Customs Act,1962.

- iii. Whether, the imported goods valued at Rs.10,22,420/- are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- iv. Whether, the importer has rendered themselves liable to penalty under Section 112 (a) of the Customs Act, 1962.

17. I find that M/s Bhoomi Fertilizer and Chemical Co. (IEC-ABCFB0360K), had filed Bill of Entry No.2723705 dated 23.03.2024 for import of goods declared as 'Super Humate Super Grade Big Shiny Flakes' under CTH-31059090 through Customs Broker M/s Sunway Logistics, CB code ADPFS1811FCH001.

18. I find that on the basis of intelligence received by SIIB (Mundra), the goods imported in Container No. TSSU5024062 covered under Bill of Entry No.2723705 dated 23.03.2024 filed by M/s. Bhoomi Fertilizer and Chemical Co (IEC No. ABCBFB0360K) was put on hold by SIIB for examination. I find that examination of the goods was carried out on dated 02.04.2024, in the presence of Shri Kanti Joshi, 'H' Card Holder of CB firm M/s Sunway Logistics and Ashok Kumar Giri, Deputy Manager Operations, All Cargo CFS, Mundra .

19. I find that during the examination, after tallying the bottle seal with import documents, the seal was cut and on opening of the container the goods found were light brown color paper bags on which mentioned as "SUPER HUMATE - SUPER GRADE - BIG SHINY FLAKES- GROASS WEIGHT: 10.00 KGS - BATCH NO.: MINI - 2024, MADE IN PRC". These paper bags were unloaded from the container one by one, after unloading the bags the same were counted and tallied with the import documents. The net weight of the goods with packing material was 28090 Kgs. From these paper bags, few bags were randomly selected and opened, it was found that goods were small black colour shinny flakes. The importer has classified the imported goods under the CTH-31059090. To ascertain the nature, description & classification, representative samples were drawn during the examination. Representative sample was sent to CRCL, Kandla for testing vide Test Memo No. 001/24-25 dated 03.04.2024.

20. I find that Summons was issued to the importer by SIIB (Mundra) and statement of Shri Chetan Vallabhbhai Akabari, General Manager and

authorized representative of M/s.Bhoomi Fertilizer and Chemical Co, Rajkot – 360004 was recorded under Section 108 of the Customs Act,1962 on dated 10.04.2024 wherein he stated that he was satisfied on the process of examination mentioned in the Examination Report and given consent to release the goods under CTH 38089340 and he will pay duty accordingly.

21. After going through the report of CRCL, Kandla dated 03.04.2024 against Test Memo No.001/24-25 dated 03.04.2024, I find that the goods are other than that declared by the importer in Bill of Entry i.e. Super Humate Super Grade Big Shiny Flakes as Fertilizer. In the instant case, the imported goods contain only one potassium salts as there are no other fertilizing elements i.e. nitrogen and phosphorus and having Humic Acid content of 65%.

22. The Explanatory Notes to the Harmonized Commodity Description and Coding system (Harmonized System) under Chapter 3105 is as under:-

“Mineral or chemical fertilizers containing two or three of the fertilizing elements nitrogen, phosphorus and potassium; other fertilizers; goods of this Chapter in tablets or similar forms or in packages of a gross weight not exceeding 10 kg,

As per test report received from CRCL, Kandla dated 03.04.2024 against Test Memo No.001/24-25 dated 03.04.2024, the representative sample were containing potassium salts of Humic acids with Humic Acid containing 65% by weight and other inorganic compounds. In the instant case, the imported goods contain only one potassium salts as there are no other fertilizing elements i.e. nitrogen and phosphorus. Therefore, I find that the imported goods cannot be classifiable under the CTH -31059090.

23. The Explanatory Notes to the Harmonized Commodity Description and Coding system (Harmonized System) under Chapter 3808 is as under: -

“38.08 - Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or palangs for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and ty-papers) (+).

3808.93 - - Herbicides, anti-sprouting products and plant-growth regulators

As the goods has the characteristics of high humic acid content i.e. 65%, I find that the goods 'Super Humate Super Grade Shiny Flakes' are rightly classifiable under the CTH-38089340 (Plant Growth Regulators). I have also gone through the Board's Circular No. 1022/10/2016-CX, dated 06.04.2016 on the subject of classification of Plant Growth Regulators, after the analysis done by the Indian Agricultural Research Institute (IARI), they had opined to be classified in CTH -3808.

24. As per the office of the Commissioner of Customs (Import), Special Investigation & Intelligence Branch (Import), Jawaharlal Nehru Custom House, Nhava Sheva's Alert per F.No.SG/Misc-43/2015-16.SIIB (I) JNCH dated 03.07.2015 and File No. SG/MISC-19/2013-14/CIU JNCH dated 13.07.2015 wherein it is mentioned that the goods should be classified under CTH-38089340.

25. In the instant case, it appears that the subject goods are not fertilizers and it is Plant Growth Regulators. I find that the importer had classified the goods under CTH-31059090 whereas the goods are rightly classified under CTH 38089340.

26. After the change in the classification of the goods, the value of the contemporaneous import was traced of the same period, I find that the value of the subject goods had been found to be on higher side, hence the transaction value of the subject goods is accepted.

27. Due to change in classification, the differential duty payable are as under:-

Declare d Asses sable V alue (in Rs.)	Duty Payable				Duty Paid				Differe ntial D uty Pay able (in Rs.)
	BCD @ 10% (in Rs.)	SWS @ 10% of BCD (i n Rs.)	IGST @ 18% (in Rs.)	Total D uty Pay able (in Rs.)	BCD @ 5% (in Rs.)	SWS @ 10% of BCD (i n Rs.)	IGST @ 5% (in Rs.)	Total D uty Pai d (in Rs .)	
1022420	102242	10224	204280	316746	51121	5112	53933	110166	206580

28. Relevant Legal Provisions:

Legal provisions applicable in this case under the Customs Act 1962 are as follows:

28.1 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, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a BE shall ensure the following:

- a. accuracy and completeness of the information given therein;
- b. the authenticity and validity of any document supporting it; and
- c. compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.

28.2 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.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary;

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For [the purposes of verification] under subsection (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his

acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

28.3 Section 111 : Confiscation of improperly imported goods, etc.

The following goods brought from a place outside India shall be liable for confiscation:

(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.

28.4 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, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 219 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 220 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

29. In view of the above discussions made in para supra, I find that the Importer M/s Bhoomi Fertilizer and Chemical Co. has tried to import "Super Humate Super Grade Big Shiny Flakes" by mis-declaring the same as Fertilizer under CTH-31059090 instead of CTH-38089340 (Plant Growth Regulator). By doing so, the importer has violated the provisions of Section 46(4) of Customs Act 1962 and made the imported goods liable for confiscation under Section 111 (m) of the Customs Act, 1962 which I confirm accordingly.

30. I find that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) of the Customs Act. 1962.

31. As the impugned goods are found to be liable for confiscation under Section 111(m) 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."

31(i). Therefore, considering the facts of the case I find it appropriate to grant an option to pay redemption fine under Section 125 of the Customs Act, 1962, in lieu of confiscation of the subject goods.

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

following order: -

ORDER

- i. I reject the declared classification of imported goods "Super Humate Super Grade Big Shiny Flakes" filed under CTH-31059090 by mis-declaring the same as Fertilizer and order the same to be re-classified under CTH-38089340 as Plant Growth Regulator in view of test reports of CRCL, Kandla dated 03.04.2024 against Test Memo No.001/24-25 dated 03.04.2024 regarding to B/E No. .2723705 dated 23.03.2024.
- ii. I order to reassess the Bill of Entry under CTH-38089340 and order to pay differential duty amounting to Rs. 2,06,580/- accordingly.
- iii. I order for confiscation of imported goods (i.e. Super Humate Super Grade Big Shiny Flakes) valued at Rs. 10,22,420/- 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.1,00,000/- (Rs. One Lakh Only) under Section 125 of the Customs Act, 1962.
- iv. I also impose a penalty of Rs. 15,000/- (Rs. Fifteen Thousand Only) on the importer M/s Bhoomi Fertilizer and Chemical Co., under Section 112 (a) (ii) of the Customs Act, 1962.

33. 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 (Arun Kumar)
Additional Commissioner
Import Section, CH Mundra

To,

M/s. Bhoomi Fertilizer and Chemical Co.,
905, RK Empire, Near Mavdi Circle,
150ft Ring Road, Rajkot-360004

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.

