

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: CUS/SHED/MISC/875/2024-Docks Examn-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/197/2024-25 dated 14.11.2024
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 14.11.2024 / 18-11-2024
E. Show Cause Notice No. & Date	: SCN and PH Waiver
F. Noticee(s)/Party/ Exporter	: M/s. Rotton Carbon, Pruthviraj, Plot no 149, Morbi Nagar, Lati Plot no 6 & 7, Lati Plot Road, Morbi, Gujarat-363641
G. DIN	: 20241171MO000000C9E6

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

- 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.
- 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 be accompanied by –
 - उक्त अपील की एक प्रति और A copy of the appeal, and
 - 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 ऊँटी/ 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 अन्य के, अधिनियम शुल्क सीमा और 1982, अपील नियम)। चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी

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 माग 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. Rotton Carbon, (IEC No. ABDFR2338E) (herein after referred as “the Exporter”) having registered address: Pruthviraj, Plot no 149, Morbi Nagar, Lati Plot no 6 & 7, Lati Plot Road, Morbi, Gujarat-363641, have filed Shipping Bill No. 5154849 dated 26.10.2024 through their CHA- M/s Swayam Shipping Services (herein after referred as “Customs Broker or CB), for export of goods declared as “Potassium Chloride (Industrial Grade)”. The total FOB value of the goods is Rs. 15,40,864/-

2. The Docks Officer in their observation report submitted that as per export policy in r/o HSN Code 31042000, export is permitted subject to: prior permission/No Objection Certificate (NOC) of the Department of Fertilizers (DOF); production of Declaration Certificate as at (i) before Customs at the time of export.

The ITC(HS) based Export Policy for Chapter 31 is as under:-

HSN Code	ITC-HS description	Policy description	Unit	policy	Restriction
		Straight Potassic Fertilizers given below: Potassium Chloride (Muriate of Potash)	Kg	Free	Exports permitted, with the prior permission of the Department of Fertilizer, by direct importers of MOP out of quantity of import made during last six months subject to the following conditions :- (i) They will not claim any concession for the quantity intended to be exported ; or (ii) They will return the concession

3104 20 00	Mineral or chemical fertilizers, potassic: Potassium Chloride			if already claimed from the Government; and 1. Furnish certificate from the statutory auditors to the Department of Fertilisers and Customs that the quantity intended to be exported has been imported in the last six months and no concession / subsidy has been claimed; and 2. Export realisation in free foreign exchange only."
	Straight Potassic Fertilizers of the specifications at Entry number 162 above which do not meet the specified conditions for free exports	Kg	Free	Export is permitted subject to: (i) Prior permission / No Objection Certificate (NOC) of the Department of Fertilizers (DOF); (ii) Production of Declaration/Certificate as at (i) before Customs at the time of export.

3. In view of the above, Docks officers observation, it is submitted that the export of subject goods i.e. "Potassium Chloride (Industrial Grade)" is permitted subject to Prior permission / No Objection Certificate (NOC) of the Department of Fertilizers (DOF); Production of Declaration/Certificate as at (i) before Customs at the time of export.

4. Exporter vide their letter dated 13.11.2024 submitted that they don't have DOF (Department of Fertilizer) NOC at the time of clearance; that they want to take the cargo back to town and cancel the shipping bill and they are ready to pay fine & penalty as per Customs rules; that they don't want any personal hearing and show cause Notice and requested to impose minimum fine and penalty.

5. As exporter is unable to produced requisite documents as per policy condition of 'Restriction' i.e Prior Permission/No Objection Certificate (NOC) of the Department of Fertilizers (DOF), the subject goods could not be allowed for export.

6. In view of above, it appears that for export of the goods declared by the exporter i.e. "Potassium Chloride (Industrial Grade)" classified under CTH- 31042000, Prior permission / No Objection Certificate (NOC) of the Department of Fertilizers (DOF) is required. The exporter has tried to export the restricted goods without valid Prior permission/NOC of Department of Fertilizers (DOF).

7.(i) As per sub-section 2 of Section 3 of the Foreign Trade (Development and Regulation)

Act, 1992, the Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology. Further, sub-section 2 of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, all goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly. For ease of reference Section 3 of the Foreign Trade (Development and Regulation) Act, 1992 is reproduced as under:-

Section 3: Powers to make provision relating to imports and exports.

3. (1) The Central Government may by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology.

Provided that the provisions of this sub-section shall be applicable, in case of import or export of services or technology, only when the service or technology provider is availing benefit under the foreign trade policy or is dealing with specified services or specified technologies.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

(ii) Para-2.01 of the Foreign Trade Policy, 2023 deals with the Restricted/Prohibited/Free with some condition goods as stipulated below:

2.01 Policy regarding import/Exports of goods

(a) Exports and Imports shall be 'Free' except when regulated by way of 'Prohibition', 'Restriction' or 'Exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonized System) [ITC (HS)] of Exports and Imports. The list of 'Prohibited', 'Restricted', and STE items can be viewed under 'Regulatory Updates' at <https://dgft.gov.in>

(b) Further, there are some items which are 'Free' for import/export, but subject to conditions stipulated in other Acts or in law for the time being in force.

(iii) **As per Section 11 of the Customs Act, 1962 no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.**

(iv) From the above facts, it appears that the exporter made the violation of the export policy and therefore the goods attempted for export are liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962 read with Section 11 of the Customs Act, 1962, therefore, the penalty in this case is imposable under Section 114(i) of the Customs Act, 1962.

8. (i) In view of the above, it appears that the exporter has failed to fulfil the policy condition of 'Restriction' i.e Prior Permission/No Objection Certificate (NOC) of the Department of Fertilizers (DOF). It appears that the Exporter has tried to export subject goods without proper permission/NOC of Department of Fertilizers. Thus, the Exporter has contravened the provisions of the Section 50 of the Customs Act, 1962, which is reproduced here-in-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.*

(ii) The relevant portion of the Section 113(d) and 113(i) are as follows:

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. -

The following export goods shall be liable to confiscation as per:

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 material particular with the entry made under this Act or in the*

case of baggage with the declaration made under section 77.

(iii) on account of export goods liable for confiscation which are **Prohibited**, the Exporter has made themselves liable for penal action under Section 114 (i) of the Customs Act, 1962 and the same is reproduced here-in-below:

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;*

(ii) *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;*

(iii) *in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.*

9. Further, from the above, the exporter, by trying to export the goods without proper permission/NOC from Department of Fertilizers, has rendered the impugned goods liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962. Furthermore, for rendering the goods liable for confiscation, the exporter has also rendered themselves liable for penal action under Section 114(i) of the Customs Act, 1962.

10. In view of the above, it appears that:

- (i) Impugned goods covered under Shipping Bill No. 5154849 dated 26.10.2024 are liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962;
- (ii) The exporter, M/s. Rotton Carbon (IEC No. ABDFR2338E), for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING:

11. Exporter vide their letter dated 13.11.2024 submitted that they don't have DOF (Department of Fertilizer) NOC at the time of clearance; that they want to take the cargo back to town and cancel the shipping bill and they are ready to pay fine & penalty as per Customs rules; that they don't want any personal hearing and show cause Notice and requested to impose minimum fine and penalty.

DISCUSSION AND FINDINGS:

12. I have carefully gone through the records of the case. The exporter requested for waiver of Show Cause Notice and personal hearing. Thus, I find that the principles of natural justice as provided in Section 122A of The Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records.

12.1. The issues to be decided by me are:

- (i) Impugned goods covered under Shipping Bill No. 5154849 dated 26.10.2024 are liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962;
- (ii) The exporter, M/s. Rotton Carbon (IEC No. ABDFR2338E), for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) of the Customs Act, 1962.

Now, I proceed to decide the case issue-wise.

12.2. I find that in examination that as per export policy in r/o HSN Code 31042000, export is permitted subject to: prior permission/No Objection Certificate (NOC) of the Department of Fertilizers (DOF); production of Declaration Certificate as at (i) before Customs at the time of export. Therefore, the exporter has not followed the policy condition for the subject goods.

12.3. I find that the goods declared as "Potassium Chloride (Industrial Grade)", total FOB value of the goods is Rs. 15,40,864/-, attempted to be exported without Prior Permission/No Objection Certificate (NOC) of the Department of Fertilizers (DOF), and the exporter vide their letter dated 13.11.2024 has also accepted that they don't have Depart of Fertilizer NOC at the time of clearance. Therefore, I find that the goods are liable for confiscation under Section 113(d) and 113 (i) of the Customs Act, 1962.

12.4. **I find that Section 114 of the Customs Act, 1962 stipulates that:**

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 ¹[²not 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;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

12.5. I find that the impugned goods to be exported under Shipping Bill No. 5154849 dated 26.10.2024 are liable for confiscation under **113(d) and 113 (i)** of the Customs Act, 1962.

Therefore, penalty is imposable in the case under **Section 114(i)** of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.

13. In view of the forgoing discussions and findings, I pass the following order:

ORDER

(i) I order to confiscate the Impugned goods i.e. "Potassium Chloride (Industrial Grade)", total FOB value of the goods is Rs. 15,40,864/-, covered under Shipping Bill No. 5154849 dated 26.10.2024 under Section 113(d) and 113 (i) of the Customs Act, 1962. However, I give the option to the exporter to redeem the same for Back to Town against payment of a Redemption Fine of Rs 3,00,000/- (Rupees Three Lakhs only) under Section 125 of the Customs Act, 1962;

(ii) I order to impose and recover Rs 1,50,000/- (Rupees One Lakh Fifty Thousand Only) on the exporter under Sections 114(i) of the Customs Act, 1962.

14. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

18-11-2024

ADDITIONAL COMMISSIONER
ADC/JC-I-O/o Pr Commissioner-Customs-Mundra

F.No. CUS/SHED/MISC/875/2024-Docks Examn-O/o Pr-Commr-Cus-Mundra Date : 18-11-2024

BY SPEED POST

To,
M/s. Rotton Carbon, (IEC No. ABDFR2338E)
Pruthviraj, Plot no 149, Morbi Nagar,
Lati Plot no 6 & 7, Lati Plot Road, Morbi,
Gujarat-363641

Copy to:-

- (1) The Deputy Commissioner(TRC)/RRA /Review Section/EDI
- (2) Guard File.