

	OFFICE OF THE PR. COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425	 सत्यमेव जयते
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A	File No.	CUS/APR/TEST/50/2024-Gr 1
B	OIO No.	MCH/ADC/ZDC/91/2025-26
C	Passed by	Zala Dipakbhai Chimanbhai Additional Commissioner, (Import Assessment), Custom House Mundra.
D	Date of order	17.06..2025
E	Date of Issue	17-06-2025
F	SCN No. & Date	Importer requested for waiver of PH & SCN
G	Noticee / Party / Importer	M/s Platina Oil Field Pvt. Ltd., C-1/B-3222, Chemical Zone, GIDC, Sarigam, District Valsad, Gujarat, India-396155
H	DIN	DIN - 20250671MO000002070F

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.
The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road Ahmedabad-380009
3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

Brief facts of the case:

M/s Platina Oil Field Pvt. Ltd., C-1/B-3222, Chemical Zone, GIDC, Sarigam, District Valsad, Gujarat, India-396155(IEC No. 5212001889) (hereinafter referred to as "Noticee" for sake of brevity) had filed B/E No. 4402982 dated 08.07.2024 for clearance of 90.31 MTS of "Base Oil" through their Customs Broker, M/s Rishi Kiran Logistics Pvt. Ltd. The importer classified the goods under Custom Tariff Item 27101971. The declared assessable value of the goods was Rs. 54,44,108/-.

The details declared in the Bill of entry are as under:

(Amount in Rs.)

Bill of Entry No. & Date	Description of Goods	Qty. in MTS	Ass. Value declared	Duty Payable declared
4402982 dated 08.07.2024	Base Oil	90.31	Rs. 54,44,108/-	Rs. 13,33,262/-

2.1 The goods were given first check with order to draw sample and forward the same to CRCL, Kandla for testing. The samples were forwarded to the Lab vide TM no. 1226226 dated 11.07.2024.

The Test Report bearing No. 3767 dated 12.07.2024 received from CRCL, Kandla states that,

"The sample received is in the form of black colored viscous oily liquid.

Composition :

It is composed hydrocarbon oil having mineral oil content more than 70% by weight and having following constant:

- i. Density at 15 Degree Celsius: 0.9261 gm/ml
- ii. Acidity (inorganic) : 0.4
- iii. Ash content : 0.04% by wt.
- iv. Water Content :2.4 % by wt
- v. Flash Point : 182 Degree C
- vi. Aniline Point : 109 Degree C
- vii. Kinematic viscosity at 40 degree C : 47.74 CST
- viii. Kinematic viscosity at 100 degree C : 6.60 CST
- ix. Viscosity Index : 86.4

Note/Comments : It is other than base oil. Whether it is waste oil for re-refining or hazardous waste couldn't be ascertained for want of testing facility.

Sealed remnant sample returned herewith."

2.2. Noting above, the importer contesting the test report vide their letter dated 23.07.2024 requested for re-testing & provisional release of the goods. As per the request re-testing of goods was approved as per circular no. 30/2017-Cus. Later the importer vide Letter dated 28.09.2024, has mentioned that the Kandla Test report has confirmed that the product does not fall under the category of restricted items (Sr. No. 18) and is classified as "other than base oil". Further,

they have a buyer M/s. Mahavira Udyog, a registered license holder with Central Pollution Control Board. They possess the necessary permissions to process and recycle waste oil and other products at their manufacturing plant. In this regard, the importer has requested for provisional clearance on the agreement to sale the material to M/s. Mahavira Udyog to enable them avoid accumulating demurrage charges and mitigate losses resulting from the declining value of the product.

2.3. Accordingly, provisional release of the goods were granted under bond of Rs. 54,44,108/- and BG of Rs. 13,33,262/- after approval of competent authority.

2.4. Later vide test report from CRCL, New Delhi received to this office on 10.10.2024 stated that

The sample is in the form of dark brown coloured viscous oily liquid. It is mainly composed of mixture of mineral hydrocarbon oil. It has following characteristic: -

On the basis of above tested parameters and guidelines of circular no 33/2001-cust dated 04.06.2001, the sample u/r is Waste oil/Used oil.

Acidity (inorganic) : 0.42

Ash content, % by mass 0.05

Sediment, % by mass 0.04

Water, % by mass 1.4

Flash point Abel, °C 175

Kinematic viscosity, cSt, at 40°C 50.98

Kinematic viscosity, cSt, at 100°C 7.13

Viscosity Index 96.65

Density at 15°C (, kg/m3) : 926.9

Total Sulphur, mg/kg : 26525.63

Pour point : 9.0,

Copper strip Corrosion for 3 h at 50 °C : 1a

Aniline Point, °C : Above 90

Calcium content, % by mass 0.00075

Silica content, % by mass 0.0001

On the basis of above tested parameters and guidelines of circular no 33/2001-cust dated 04.06.2001, the sample u/r is Waste oil/Used oil.

2.5. From the above reports, it appears that the imported cargo has been described as "Low Viscosity Fuel Oil" classifiable under Customs Tariff Item 27101971 ITC (HS), however on testing; it is revealed that the samples of the imported goods are waste oil.

2.6. In view of the above, the said goods are classifiable under CTH 27109900 and are restricted as per the Foreign Trade Policy. The relevant portion of the ITC (HS), 2017 Schedule 1- Import Policy is reproduced as follows:-

HS Code	Item Policy Condition Waste Oil	Description Condition	Policy	Policy condition
27109100	Containing polychlorinated biphenuls (PCBs) polychlorinated terphenyls (PCTs)	Restricted	Imports subject to Policy Condition (3) below Para 2.20 of Foreign Trade Policy and	

	or polybrominated biphenyls (PBBs)	condition at Policy Condition (2) below
27109900	Restricted	

The import of the waste is governed by the Hazardous and Other Waste (Management, handling and Transboundary Movement) Rules, 2016.

2.7. As per definition given a Rule 3(39) in part I of Notification dated 04.04.2016 issued by the Ministry of Environment, Forest and Climate Change notified as "The Hazardous and other waste (management and Transboundary) Rules 2016 'waste oil' means any oil which includes spills of crude oil, emulsions, tank bottom sludge and slop oil generated from petroleum refiners, installations or ships and can be used as fuel in furnaces for energy recovery, if it meets the specifications laid down in Part-B of Scheduled V either as such or after reprocessing.

2.8. Waste oil is covered under Schedule IV under Rule 6(i) (ii) and 6(2) of Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 issued by the Ministry of Environment, Forest and Climate Change. The waste oil figures at Sr. No. 20 of the Schedule IV of the listed recyclable hazardous wastes which is reproduced below:-

SCHEDULE IV

[See rules 6 (1) (ii) and 6 (2)]

List of commonly recyclable hazardous wastes

Sl. No.	Wastes
1	2
20.	Used Oil and Waste Oil

2.9. Import of Waste oil is restricted as per Para 2.08 of the Foreign Trade Policy 2015-20 also read with Rule 12 (1) of Hazardous & Other Waste (Management and Transboundary Movement) Rules, 2016 as authorization of Central or State Pollution Control Board or Registration under the provisions of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016 is required.

2.10. The importer vide letter dated 28.09.2024 has informed that they had a buyer, M/s Mahavira Udyog, a registered license holder with Central Pollution Control Board. They Possess the necessary permissions to process and recycle waste oil and other products at their manufacturing plants. It appears that the importer is not having an authorisation issued in their own name under Rule 6 of the Hazardous and other waste (management and Transboundary) Rules 2016.

2.11. Further, in terms of Section 46(4) of the Customs Act, 1962, the importers of any goods are required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry, whereas in the instant case, it appears that the importer had filed Bill of Entry with incorrect particulars and classification, hence the importer has contravened the provisions of section 46(4) of the Customs Act, 1962.

2.12. The imported Base Oil declared valued Rs.54,44,108/- appear classifiable under Custom Tariff Item 27109900 instead of 27101971 and are imported in

violation of the provisions of Hazardous and other waste (management and Transboundary) Rules 2016 readwith the provisions of Section 11 of the Customs Act, 1962 and hence appear liable for confiscation under Section 111 (d) and (m) of the Customs Act, 1962. The importer for such acts of commission / omission also appears liable for penalty under Section 112 (a) (i) and 114AA of the Customs Act 1962.

3. Relevant Legal Provisions:

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.

.....

(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, reassess the duty leviable on such goods.

Section 46. Entry of goods on importation:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

[(4A) the importer who presents a bill of entry shall ensure the following, namely:

a. The accuracy and completeness of the information given therein;

- b. The authenticity and validity of any document supporting it; and
- c. Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

Section 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation:-

(a) --

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(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

Section 112. Penalty for improper importation of goods, etc. – Any person,-

a . who, in relation to any goods, does or omits to do any act which act or

omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,-

- i. in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- ii. in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

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

- iv. 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 not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
- v. in the case of goods falling both under clauses (i) and (iii), to a penalty 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;
- vi. 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.

Section 114AA : Penalty for use of false and incorrect material. [Inserted by Act 29 of 2006

- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

SHOW CAUSE NOTICE & PERSONAL HEARING

3. This office vide letter dated 24.02.2025 has informed the importer that as per the test report received from CRCL New Delhi, the goods are found as waste oil/used oil. Thus, there is a mis-declaration made in the said BE and necessary action is required to be taken as per Customs Act, 1962.

The importer vide their letter dated 10.03.2025 has submitted his reply as below:

"We are the regular importer of Base Oil & manufacturing products through Base Oil. In this case also, we have ordered the Base Oil but due to oversight the supplier has sent the material which was not confirming the parameters of Base Oil & cargo found different as per the Test Report of CRCL Lab, Delhi, i.e. Non-Hazardous used oil suitable for recycling

Further, as per our previous permission granted by your good office for recycling of used oil, the cargo was sold to M/s Mahavira Udyog, a registered license holder with the Central Pollution Control Board, They possess the necessary permissions to process and recycle used oil and other products at their manufacturing plant

Since it was done unintentionally & being a genuine manufacturer and has been importing at Mundra & other ports for more than 5 years with a 100% clean track record and positive test reports, we respectfully request you finalize the BOE & release the Bank Guarantee".

3.1 The importer in their reply dated 21.03.2025 has submitted they do not want personal hearing and show cause notice in the matter and requested to finalize the BE and release the bank guarantee.

DISCUSSION AND FINDINGS

4. I have carefully gone through the facts of the case available on records. The importer vide letter dated 21.03.2025 has already submitted their consent to finalize said Bill of Entry. 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 which are required to be decided:

- a. Whether, the classification of the goods as claimed by the importer under heading 27101971 is liable to be rejected and the goods are liable to re-classified under heading 27109900 and B/E is liable to be re-assessed.
- b. Whether, the goods imported vide B/E 4402982 dated 08.07.2024 are liable to be confiscated under section 111(d) of the Customs Act, 1962
- c. Whether, the importer is liable to be penalized under section 112(a) (i) and 114 AA of the Customs Act, 1962.

4.1. I observed that M/s Platina Oil Field Pvt. Ltd., C-1/B-3222, Chemical Zone, GIDC, Sarigam, District Valsad, Gujarat, India-396155 has imported "Base oil" under CTH-27101971 vide Bill of Entry No. 4402982 dated 08.07.2024. Further, the final test reports received from CRCL Delhi revealed that the imported goods are "Waste Oil/Used Oil" leading to classification of goods under Chapter 27109900. The importer vide bill of entry no. 4402982 dated 08.07.2024 has attempted to import the Waste Oil/Used Oil falling under CTH -27109900 which are restricted as per the Foreign Trade Policy by mis-classifying the same as "Base Oil" and mis-declaring CTH as 27101971. The imported goods classifiable under CTH-27109900 are restricted as per the Foreign Trade Policy.

4.2. In the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the classification of the goods under CTH 27101971 instead of the correct CTH of 27109900, with an intention to import restricted goods as per the Foreign Trade Policy. It is to mention that the importer has stated that they have a buyer of waste oil which became conclusive after first test report from CRCL Kandla. If the goods imported by the importer were actually Base oil, then they would have sold it to the buyer of Base Oil instead of to the buyer of waste oil. However, since the goods were sold to buyer of waste oil and not to the buyer of base oil, which is conclusive to believe that the importer deliberately and willfully mis-stated the facts in terms of import of restricted goods. It is also pertinent to mention here that the importer requested for re-test however didn't wait for re-test report also making it conclusive that the importer was well aware of the fact about the nature of the goods imported.

The goods waste oil as per test report, restricted in nature and the importer not in possession of any authorization from DGFT for import of waste oil.

Whereas, the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, *ibid* casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration.

4.3. Therefore, I find that the impugned goods imported vide BE No. 4402982 dated 08.07.2024 having declared value of Rs. 54,44,108/- are liable for confiscation under Section 111(d) of the Customs Act, 1962 and the importer rendered themselves liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

4.4. In the instant case, the importer had intentionally submitted false and incorrect document and made wrong declaration about the CTH and description of the imported goods. Therefore, the imported goods are required to be re-classified under CTH-27109900 and the said goods are liable for confiscation under Section 111 (d) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 114AA of Customs Act 1962.

4.5. Whereas, Section 125(1) of the Customs Act, 1962 provides that: "*Whenever confiscation of any goods is authorized by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit*".

4.6. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. It is amply clear from the said section that, where the confiscated goods are prohibited for import or export, discretion has been vested in the adjudicating authority to decide the issue on the basis of the facts and circumstances involved. Accordingly, even though the goods are not physically available for confiscation as they have already been cleared and released, I am empowered to impose redemption fine in lieu of confiscation.

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

ORDER

- I. I order to reject the declared description and classification i.e. Base Oil, CTH - 27101971 of the goods imported vide Bill of Entry No. 4402982 dated 08.07.2024 and order to classify the goods imported vide Bill of Entry No. 4402982 dated 08.07.2024 under CTH 27109900 as waste oil.
- II. I order to re-assess the Bill of Entry No. 4402982 dated 08.07.2024 as per Section 17 of the Customs Act, 1962.
- III. I order for confiscation of the goods imported vide Bill of Entry No. 4402982 dated 08.07.2024 declared as "Base Oil (CTH-27101971)" weighing 90.31 MTS having Assessable Value of Rs. 54,44,108/- (Rupees Fifty Four lakhs Forty Four Thousand and One Hundred Eight only) imported vide Bill of Entry No. 4402982 dated 08.07.2024 under Section 111(d) of the Customs Act, 1962. However, as the goods are not available for confiscation, a redemption fine of Rs 6,00,000/- (Rupees Six Lakhs only) under Section 125 of Customs Act, 1962 is being imposed on M/s Platina Oil Field Pvt. Ltd. in lieu of confiscation.
- IV. I impose a penalty of Rs 6,00,000/-(Rs Six Lakhs Only) on the importer M/s Platina Oil Field Pvt. Ltd. under Section 112 (a)(i) of the Custom Act, 1962.
- V. I impose a penalty of Rs 3,00,000/-(Rs Three Lakhs Only) on the importer M/s Platina Oil Field Pvt. Ltd. under Section 114AA of the Custom Act, 1962.

6. 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.

Additional Commissioner
Import Section, CH Mundra

F. No.: CUS/APR/TEST/50/2024-Gr 1

M/s Platina Oil Field Pvt. Ltd.,
C-1/B-3222, Chemical Zone, GIDC,
Sarigam, District Valsad, Gujarat, India-396155

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. Guard File.