



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
 MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
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A	File No.	CUS/APR/BE/SAO/44/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/110/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	25.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s Naksh Trading Co. (HUF) Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001
F	DIN No.	20240771MO000000C56D

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 नियम 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 ड्रूटि/ व्याज/ 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 alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Naksh Trading Co. (HUF) situated at Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001 (herein after referred to as 'the importer' for the sake of brevity) have filed Bill of Entry No. 2090714 dated 10.02.2024 for import of purportedly said to be Base Oil- CTH-27101971.

1.2. On the basis of input received from the Directorate General of Intelligence (DRI), Surat Regional Unit vide letter dated 12.02.2024 to the effect that the imported consignment may have some suspicious item, total 10 containers imported vide BL No. KWI0120146 dated 10.01.2024 and BE No. 2090714 dated 10.02.2024 said to have Base Oil were kept on hold for examination and further inquiry by the SIIB Section, Custom House, Mundra.

2. INVESTIGATION AS PER IR- 57/2024-25 DATED 15.07.2024:

2.1 The impugned consignment was examined on 28.02.2024 at the Ameya Logistics Pvt Ltd. (Honeycomb- CFS) in presence of authorised representative of CB firm and CFS, during examination 04 representative samples from 10 containers were drawn to ascertain the exact composition of the imported goods declared as Base Oil and forwarded to the CRCL, Vadodara vide Test Memo No. 901 to 904 all dated 02.03.2024.

2.2 The CRCL, Vadodara vide their reports dated 06.03.2024 has submitted the chemical analysis of the samples as under:

1. Test Memo No 901 dated 28.02.2024

It is composed of mixture of hydrocarbon oil more than 70% by weight.

<i>Density at 15°C</i>	<i>0.8267/g/ml</i>
<i>Flash Point</i>	<i>25.5°C</i>
<i>Sulphur Content %</i>	<i>0.045</i>
<i>Distillation range- IBP</i>	<i>90.6°C</i>
<i>95.0% distilled at</i>	<i>353.2°C</i>
<i>97.8% distilled at</i>	<i>365.2°C</i>
<i>Kinematic Viscosity at 40°C</i>	<i>2.950 cst</i>
<i>Kinematic Viscosity at 100°C</i>	<i>1.233 cst</i>

On the basis of analytical findings, the sample u/r does not meet the requirement of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), Kerosene (IS:1459:2018, IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automative diesel fuel (IS:1460:2017), HFHSD (IS: 16861:2018), transformer oil, biodiesel, diesel fuel blend B6-B20 (IS:16531:2016), Gas Oil (IS: 17789:2022), vacuum gas Oil (IS:17792:2022), Kerosene Intermediate (IS:17793:2022).

2. Test Memo No 902 dated 28.02.2024

It is composed of mixture of hydrocarbon oil more than 70% by weight.

<i>Density at 15°C</i>	0.8344/g/ml
Flash Point	30°C
<i>Sulphur Content %</i>	0.036
<i>Distillation range- IBP</i>	84.1°C
95.0% distilled at	348.1°C
97.8% distilled at	360.3°C
<i>Kinematic Viscosity at 40°C</i>	3.253 cst
<i>Kinematic Viscosity at 100°C</i>	1.288 cst

On the basis of analytical findings, the sample u/r does not meet the requirement of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), Kerosene (IS:1459:2018, IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automative diesel fuel (IS:1460:2017), HFHSD (IS: 16861:2018), transformer oil, biodiesel, diesel fuel blend B6-B20 (IS:16531:2016), Gas Oil (IS: 17789:2022), vacuum gas Oil (IS:17792:2022), Kerosene Intermediate (IS:17793:2022).

3. Test Memo No 903 dated 28.02.2024

It is composed of mixture of hydrocarbon oil more than 70% by weight.

<i>Density at 15°C</i>	0.8379/g/ml
Flash Point	26.5°C
<i>Sulphur Content %</i>	0.045
<i>Distillation range- IBP</i>	75.6°C
95.0% distilled at	345.7°C
97.8% distilled at	355.4°C
<i>Kinematic Viscosity at 40°C</i>	3.204 cst
<i>Kinematic Viscosity at 100°C</i>	1.283 cst

On the basis of analytical findings, the sample u/r does not meet the requirement of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), Kerosene (IS:1459:2018, IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automative diesel fuel (IS:1460:2017), HFHSD (IS: 16861:2018), transformer oil, biodiesel, diesel fuel blend B6-B20 (IS:16531:2016), Gas Oil (IS: 17789:2022), vacuum gas Oil (IS:17792:2022), Kerosene Intermediate (IS:17793:2022).

4. Test Memo No 904 dated 28.02.2024

It is composed of mixture of hydrocarbon oil more than 70% by weight.

<i>Density at 15°C</i>	0.8318/g/ml
Flash Point	25°C
<i>Sulphur Content %</i>	0.043
<i>Distillation range- IBP</i>	91.7°C
95.0% distilled at	357.1°C
97.8% distilled at	366.2°C
<i>Kinematic Viscosity at 40°C</i>	2.894 cst

<i>Kinematic Viscosity at 100°C</i>	<i>1.219 cst</i>
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On the basis of analytical findings, the sample u/r does not meet the requirement of light oil and preparation, solvent 60/80, 50/120, 145/205, 125/240 (IS:1745:2018), Kerosene (IS:1459:2018, IS:1571:2018), Light Diesel Oil (IS:15770:2008), Automative diesel fuel (IS:1460:2017), HFHSD (IS: 16861:2018), transformer oil, biodiesel, diesel fuel blend B6-B20 (IS:16531:2016), Gas Oil (IS: 17789:2022), vacuum gas Oil (IS:17792:2022), Kerosene Intermediate (IS:17793:2022).

2.3. From above test reports, it appears that the all the four samples do not meets the test parameter for Base Oil (as declared in the BE) so far as **Flash Point of the sample is concerned**. As per the IS 18722 (Part-1) 2024, the flash point of the Base Oil falls within the range of 150 °C to 290 °C depending upon the category of the Base oil. Further, on the basis of test reports, it appears that the imported goods, found as mixture of hydrocarbon oil more than 70% by weight is more appropriately classifiable under CTH-27101990 as under:

2710 - Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing bio-diesel and other than waste oil."

271019 -- Other

27101990 --Other

3.1. The test reports have been disclosed to the importer and the CB vide email dated 14.03.2024. In response, the importer vide email dated 27.03.2024 & subsequent letter dated 22.05.2024 has submitted that there was discrepancy between declared goods and the test results and their supplier has also accepted the results and accordingly, they also accept the results of the CRCL, Vadodara they are agree with the findings outlined in the test reports and given the specification of Mixed Hydrocarbon Oil matches the duty structure of 5%, they are ready to pay any applicable fines and penalties to facilitate the clearance of these goods.

Sr. No.	Container NO. (Import)	Shifted to Domestic container
1	TRHU1630810	CAZU3263128
2	TRHU2995032	CLHU3213104
3	TRLU9381013	NIDU2202125
4	TRHU1008643	TGHU2640529
5	TRHU1082698	HLXU3302705
6	TCLU7366290	TGHU2997460

3.2. The imported cargo covered under BE No. 2090714 dated 10.02.2024, shifted into the domestic container as tabulated below has been seized vide seizure memo dated 10.06.2024 and handed over to the

7	TTNU1081710	CRSU1015737	custodian of the CFS-Ameya Logistics Pvt. Ltd vide Supurtnama dated 10.06.2024.
8	TGHU1554982	XINU1282358	
9	TCLU7362843	TGHU0671048	
10	CMAU2657874	AMFU3230227	

3.3. A statement of Shri Rakesh Shivaji More, Karta of M/s Naksh Trading Co. (HUF) has been recorded on 06.07.2024, wherein he has inter-alia stated as under:

- *M/s Naksh Trading Co. was established this firm in December, 2023 for trading of Petroleum Products.*
- *M/s Naksh has two GSTIN registration, (i) 22AAYHR9652R1ZU w.e.f. 19.01.2024 having principal place of business at Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001 and (ii) 27AAYHR9652R1ZK having principal place of business at R No. HW 2679, F R Dmello Chawl, Kotwadi TPS VI P. M. Road, Santacruz, West, Mumbai.*
- *They have imported two consignments of Base Oil at Mundra Port from UAE and filed Bill of Entry No. 2090714 dated 10.02.2024 and 2050456 dated 08.02.2024 etc. These are their first import which have been kept on hold by the SIIB, Customs House, Mundra.*
- *They have procured the consignment of Base Oil on high sea sale basis from M/s Sole Bloom Private Limited, Shop No. 29, hi Life Mall, Phiroz Shah Mehta Road, Sabri Hotel, Santacruz West, Mumbai-54 and filed BE No. 2090714 dated 10.02.2024.*
- *They do not have chemical analysis reports of the above consignments as the same has not been provided by the supplier.*
- *He was agreed with the examination report and drawl of samples from the consignments. He was also agreeing with the test reports received from the CRCL, Vadodara.*
- *After getting information about the test result of the samples of the imported consignment vide Bill of Entry No. 2090714 dated 10.02.2024, initially they requested for re-sampling and re-testing of the consignment but later on, on clarification received from the supplier, they have accepted the test results vide letter dated 22.05.2024 and requested to allow for the release of the cargo as the duty structure on*

the same was 5% as in case of imported cargo and they are ready to pay any applicable fines and penalties to facilitate the clearance of these goods

- *They are also ready to pay applicable fine and penalty as per the Customs law in this matter.*
- *On being asked about the license from the Petroleum & Explosive Safety Organization (PESO) for import and storage of the above imported item identified as class B Petroleum product, he has stated that they are availing the facility of storage available with M/s Industrial Chemi-Lube Pvt. Ltd., 296/1/3, Kherdi Village, Khanvel Road, Dadra Nagar Haveli, Silvasa which have PESO license no. P/HQ/DN/15/2571 dated 23.02.1999 valid till 31.12.2025.*

4. On the basis of outcome of the test reports, as discussed above, the imported item, i.e. Mix Hydrocarbon Oil (CTH-27101990) has been found mis declared and mis classified as Base Oil under CTH-27101971. Therefore, the assessable value of the imported item declared in the Bill of Entry by the importer under Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ('CVR' for sake of brevity) has been checked with the contemporary assessable value of the identical/similar goods in accordance with the CVR. On checking the NIDB portal, it was noticed that during the month of February, 2024 (as the BE dated is 10.02.2024) the assessable value of the identical goods, Mix Hydrocarbon Oil-CTH-27101990 imported from United Arab Emirates at Mundra Port starts at **Rs. 38.61 per kg**. Here, it is pertinent to mention that in the importer has declared the value of the imported item (though with incorrect description and classification) @ **Rs. 39.876/kg**. Therefore, considering the above unit price as per NIDB data, the assessable value of the impugned item declared by the importer appears to be acceptable for the item under import with correct description as Mix Hydrocarbon Oil (MHO) and correct classification under CTH-27101990. Thus, the total value of the imported cargo appears unchanged at Rs. 76,80,429/-.

5. Further, it is noticed that the duty structure under the declared CTH- 27101971 as Base Oil is BCD@5%+SWS+IGST@18% and on the basis of investigation conducted in para supra, the correct description of the imported item as MHO under CTH-271001990 attracts similar duty structure of BCD@5%+SWS+IGST@18%. Therefore, in view of the above, since no change appears in the assessable value of the imported item as well as duty structure, there would be no change in applicable duty amount declared in the BE, i.e. Rs. 18,80,937/- (BCD-3,84,021/-+SWS-38,402/-+IGST-14,58,514/-) even after re-determination of the description and classification of the imported goods vide BE No. 2090714 dated 10.02.2024.

6. LEGAL PROVISIONAS:

6.1 As per Section 2 (39), '**smuggling**', in relation to any goods, means *any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

6 . 2 **SECTION 46** of the Act, prescribes that 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.

6.3. Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

6.4 Further, **Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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;]

(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 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 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.

6.5. **SECTION 124** prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

- a. *is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;*
- b. *is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and*

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

7. OUTCOME OF THE INVESTIGATION:

7.1 After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration in all aspects in the Bills of Entry and to pay the correct amount of Duty. In terms of Section 46 (4) of the Customs Act, 1962, the importers are required to make a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs duty.

7.2 Thus, from the above discussion, it appears that the imported cargo covered under BE No. BE No. 2090714 dated 10.02.2024 (total 10

containers) and declared as Base Oil (CTH-27101971) is found mis declared and misclassified in as much as that the test reports received from the CRCL, Vadodara testifies the imported cargo as 'Mixed Hydrocarbon Oil' (in 10 containers- total weight-188.798 MTs) more appropriately classifiable under CTH-27101990. Thus, by their acts of omission and commission renders imported goods having declared value of Rs. 76,80,429/- liable for confiscation under Section 111(m) of the Customs Act, 1962.

7.3 From the discussion in para supra, it appears that the importer, M/s Naksh Trading Co. (HUF) has attempted to import 'Mixed Hydrocarbon Oil' in guise of Base oil by way of mis declaration and mis classification by wilful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act and Rules made thereunder as discussed above with intent to smuggle these goods into India. The said acts of omission and commission on the part of the M/s Naksh Trading Co. (HUF) have rendered themselves liable for penalty under the provisions of Section 112(a) (ii) of the Customs Act, 1962.

**8. REQUEST FOR WAIVER OF NOTICE AND PERSONAL
H E A R I N G : -**

The importer vide letters dated 22.05.2024, letter dated 05.07.2024/received vide email dated 10.07.2024 and in his statement recorded on 06.07.2024 has accepted the results of the CRCL, Vadodara and submitted that they are ready to pay any applicable fines and penalties to facilitate the clearance of these goods without any Personal Hearing and Show Cause Notice in the matter.

9. In view of the above, it appeared that:-

- i. The declared description of 'Base Oil' and declared classification under CTH-27101971 of the goods imported vide BE No. 2090714 dated 10.02.2024 is liable to be rejected and to be held as Mixed Hydrocarbon Oil under CTH-27101990 (as testified by the CRCL, Vadodara and admitted by the importer).
- ii. The Imported item, Mixed Hydrocarbon Oil-CTH-27101990 (total weight-188.798 MTs) having total declared value of Rs. 76,80,429/- mis declared as Base Oil covered under above said BE is liable to confiscation under Section 111 (m) of Customs Act, 1962.
- iii. Penalty under Section 112 (a) (ii) of the Customs Act, 1962 is imposable upon the importer.

SHOW CAUSE NOTICE & PERSONAL HEARING

8. The importer vide letters dated 22.05.2024, letter dated 05.07.2024/received vide email dated 10.07.2024 and in his statement recorded on 06.07.2024 has accepted the results of the CRCL, Vadodara and submitted that they are ready to pay any applicable fines and penalties to facilitate the clearance of these goods without any Personal Hearing and Show Cause Notice in 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

9. M/s Naksh Trading Co. (HUF) situated at Ground Floor, Block No 15, Gore Parisar, Taj Bhawan Road, Near Raj Bhawan, Civil Lines, Raipur, Chattisgarh-492001 (herein after referred to as 'the importer' for the sake of brevity) have filed Bill of Entry No. 2090714 dated 10.02.2024 for import of purportedly said to be Base Oil- CTH-27101971. On the basis of input received from the Directorate General of Intelligence (DRI), Surat Regional Unit vide letter dated 12.02.2024 to the effect that the imported consignment may have some suspicious item, total 10 containers imported vide BL No. KWI0120146 dated 10.01.2024 and BE No. 2090714 dated 10.02.2024 said to have Base Oil were kept on hold for examination and further inquiry by the SIIB Section, Custom House, Mundra.

9.1 I find that the importer has requested to waive of SCN & PH and to adjudicate the matter; the importer also accepted that the goods are wrongly sent by the supplier. I find that the principle of natural justice is being followed and SCN & PH has been waived off as per the request of the importer, hence, I take up the issue for adjudication on the basis of facts available on record.

9.2 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. In the instant case, I find that the importer had filed the bill of entry with incorrect particulars by mis-declaring the description as "BASE OIL and CTH" as 27101971; whereas, during examination the goods covered under the subject cargo found to be "Mixed Hydrocarbon Oil under CTH-27101990"; hence, in the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the CTH and declaring applicable duty on the imported goods. Therefore, the imported goods are required to be re-classified under CTH-27101990 and the said goods are liable for confiscation under Section 111 (m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112 (a) (ii) of Customs Act 1962.

9.3. Whereas, Section 125(1) of the Customs Act, 1962 provides that:

"Whenever confiscation of any goods is authorised 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".

9.4. 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. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject to clearance of goods for Home Consumption with condition to re-assessment of the goods as proposed.

9.5. I further find that as per the records put before me, the goods found during the examination/investigation on the basis of test report is freely importable and the goods as declared by the importer and the goods found in the cargo is having higher declared assessable value and attracts similar duty structure; hence, I don't find any substantial malafide intention at the end of the importer, therefore, I am not inclined to impose harsh penalties or heavy redemption fine on the confiscated goods.

10. In view of the aforesaid discussions and findings, I pass the following;

ORDER

10.1 I order to reject the declared description "*BASE OIL*" & classification i.e. 27101971 of the goods imported vide Bill of Entry No. 2090714 dated 10.02.2024 and order to re-classify the said goods under CTH 27101990 as "Mixed Hydrocarbon Oil".

10.2. I order for confiscation of the goods declared as "Base Oil" weighing 188.798 MTs having Assessable Value of Rs. 76,80,429/- (Seventy Six Lakh Eighty Thousand Four Hundred Twenty Nine Only) imported vide Bill of Entry No. 2090714 dated 10.02.2024 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. 8,00,000/-(Eight lakhs Only) under Section 125 of the Customs Act, 1962.

10.3. I impose a penalty of Rs. 5,000/-(Rs. Five Thousand Only) on the importer M/s Naksh Trading Co. (HUF) under Section 112 (a)(ii) of the Custom Act, 1962.

11. 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
Date: 25-07-2024 18:22:53
(Arun Kumar)
Additional Commissioner
Import Section, CH Mundra

To,

M/s Naksh Trading Co. (HUF)
Ground Floor, Block No 15, Gore Parisar,
Taj Bhawan Road, Near Raj Bhawan,
Civil Lines, Raipur, Chattisgarh-492001

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 Deputy Commissioner of Customs (SIIB), Custom House, Mundra.
5. The Manager, Concerned CFS, MP & SEZ, Mundra
6. Guard File.