



		<p style="text-align: center;"><u>आयुक्त का कार्यालय, सीमाशुल्क,</u> OFFICE OF THE COMMISSIONER OF CUSTOMS <u>सीमा शुल्क सदन, कांडला, कच्छ, गुजरात</u> CUSTOM HOUSE: KANDLA, KUTCH. New customs Bldg., Nr. Balaji Temple, Kandla Kutch, Gujarat</p> <p>Phone : 02836-271468-469 E-mail: appgrl@gmail.com</p>
	File No.	CUS/APR/MISC/1484/2021-GR 1-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/RKJ/28-31/2024-25
C	Passed by	Shri Rakesh Kumar Jain, Additional Commissioner.
D	Date of order	27.03.2025
E	Date of issue	27.03.2025
	SCN No. & Date	Importer vide letter dated 25.03.2025 has sought waiver of SCN & PH
G	Noticee(s)/Co-Noticee(s)	<ol style="list-style-type: none"> 1. M/s Quantum Petro Chem India 2. M/s InterasiaEnterprises. 3. M/s Mahadev Trading 4. M/s Noya Infrastructure LLP

1. अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता
 This Order - in - Original is granted to the concerned free of charge.

2.

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

"सीमा शुल्क आयुक्त (अपील), कांडला

मंजिल 7, ZTax, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

7th Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की 3T#r I
 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 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

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 2/- 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. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870. 5.

अपील ज्ञापन के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये 6.

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo. 6.
अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क अधिनियम 1982, 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, आयुक्त (अपील)के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (Appeals) 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.

ORDER-IN-ORIGINAL

BRIEF FACTS OF THE CASE:

The following Applicant (hereinafter referred to as importer) filed Bill of Entry detailed as under through their Custom Broker M/S. Saarthee Shipping, Gandhidham, for clearance of total quantity of 1598 MTS, imported vide vessel MT HANA-1 vide under IGM no. 1122750 dated 08.02.2025 of " Mix Hydrocarbon OIL in bulk. The details are as under.

Sr.No	Name of the Taxpayer	Vessel Name	B/E NO & Date	B/E QTY. Cleared (M.T)	BL Quantity	Road Dispatched Qty.	Excess Physical Stock (MT.)	% of Total QTY
1	M/s QUANTUM PETRO CHEM INDIA	MT HANA-1	8261248 DTD 09.02.2025	515	515	515	28.18	5.47
2	M/s INTERASIA ENTERPRISES	MT HANA-1	8261273 DTD 09.02.2025	385	385	385	21.06	5.47
3	M/s MAHADEV TRADING	MT HANA-1	8261272 DTD 09.02.2025	385	385	385	21.06	5.47
4	M/S NOYA INFRASTRUCTURE LLP	MT HANA-1	8261245 DTD 09.02.2025	313	313	313	17.13	5.47
			Total	1598	1598	1598	87.43	5.47

- At the time of out of charge by Superintendent Docks, the goods were found to be as declared in the B/E as well as invoice and packing list. However, the quantity of 87.43 MTS has been found excess, over and above, the declared quantity of 1598 MTS, which is excess by (5.47%) of the declared quantity of the Goods.
- It was therefore alleged that the importer has mis-declared the quantity of the goods to evade the Customs duty. The importer has mis-declared the

quantity of goods to the tune of 1598 MTS valued at Rs. 4017564/-as tabulated below:

A	B	C	D	E	
Quantity (In MTS)	Unit Price (AED/MT)	Exchange Rate	Assessable Value (CF) (In Rs.)	Insurance 1.125% of Rs.(1850.94*24.55)	Total Assessable Value(in RS.)
87.43	1850.94	24.55	3972859.65	44253	4017564.43/-

The duty involved in the mis-declared goods is 9,83,902/- as detailed below:

Duty Head	Rate (in %)	Assessable Value (In Rs.)	Duty (in Rs.)
BCD	5%	4017564.43	200878.2
ACD	0		
sws	10%		20087.8
ADD			
CVD	0		
IGST	18%		762935.5
Total			9,83,902/-

4. The importer has failed to observe the conditions of Section-46(4) of the Customs Act, 1962 and made the goods liable to confiscation under the provisions of Section-III (l) of the Custom Act 1962, rendered themselves liable to the penal action under the provisions of Section-112(a) of the Customs Act, 1962.
5. The Importer, vide their letter dated 25.03.2025 has requested for waiver of the Show Cause Notice and Personal Hearing and to decide the matter on merit. I therefore proceed to decide the case on merits.

DISCUSSION & FINDING

6. Ongoing carefully through the brief facts of the case and the importers submission in this regard. The importer through his CHA M/S Saarthee Shipping Co. vide letter dated 25.03.2025 have requested for waiver of show cause notice and personal hearing in the matter. Hence, I proceed to decide the case on the basis of the documentary evidences available on records.
7. It is found that on examination, gross weight of the goods was found to be 87.43 MTS excess, over and above, the declared gross weight of 1598MTS as per Bill of Entry and import documents. Thus, the importers have mis-

declared quantity of the goods to evade payment of proper Customs duty. Assessable Value of the impugned goods i.e. 87.43 MTS of " Mix Hydrocarbon OIL in bulk , is determined to be at Rs. 4017564.43/- and duty payable for the clearance of the same comes to Rs.9,83,902/- using the declared unit value and the applicable duty rate as declared in the Bill of Entry details as above.

8. Since the excess quantity of the goods have been found on examination of the goods, for the clearance of the same, appropriate customs duty becomes leviable and payable. In the instant case, the impugned goods are 87.43 MTS of " Mix Hydrocarbon OIL in bulk valued at Rs. 4017564.43/- and duty payable for the clearance of the same comes to Rs.9,83,902/-.
9. As the importer have mis-declared quantity of the goods in the above mentioned Bill of Entries dated 09.02.2025 and the same was found to be in excess to the tune of 87.43 MTS to the declared quantity, the said quantity of the goods are liable for confiscation under section 111 (1) of the customs Act 1962 which provides :

"Following goods brought from a place outside India shall be liable for confiscation:

"Any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;"

{Emphasis Supplied}

10. As mentioned herein before, the value of the impugned goods comes to Rs. 40,17,564.43/- and the detailed bifurcation is shown in the table below:

SR NO	IMPORTER NAME	EXCESS. QTY	ASS. VALUE	BASIC DUTY 5%	SWS 10%	GST 18%	TOTAL DUTY
1	QUANTUM PETRO CHEM INDIA	28.180 MTS	1294921.26	64746.10	6474.60	245905.50	317126.00
2	INTERASIA ENTERPRISES	21.060 MTS	967744.56	48387.20	4838.70	183774.70	237001.00
3	MAHADEV TRADING	21.060 MTS	967744.56	48387.20	4838.70	183774.70	237001.00
4	NOYA INFRASTRUCTURE LLP	17.130 MTS	787154.05	39357.70	3935.80	149480.60	192774.00
	Total	87.430 MTS	4017564.43	200878.20	20087.80	762935.50	983902.00

11. Further, Section 112(a) Customs Act, 1962, provides:

Penalty for 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"

(b).....

Shall be liable,-

(i).....

(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 centage of the duty sought to be evaded or five thousand rupees, whichever is higher:

.....

12. Further, Section 125 Customs Act, 1962, provides:

(1) Whenever confiscation of any goods is authorized 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 [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:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, no such fine shall be imposed]: Provided further that] without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

.....

.....

13. Further Section 61 (2) of Customs Act, 1962

(1) Any warehoused goods may remain in the warehouse in which they are deposited or in any warehouse to which they may be removed, -

(a) in the case of capital goods intended for use in any hundred per cent export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other operations have been permitted under section 65, till their clearance from the warehouse;

(b) in the case of goods other than capital goods intended for use in any hundred per cent. export oriented undertaking or electronic hardware technology park unit or software technology park unit or any warehouse wherein manufacture or other

operations have been permitted under section 65, till their consumption or clearance from the warehouse; and

(c) in the case of any other goods, till the expiry of one year from the date on which the proper officer has made an order under sub-section (1) of section 60 :

Provided that in the case of any goods referred to in this clause, the Principal Commissioner of Customs or Commissioner of Customs may, on sufficient cause being shown, extend the period for which the goods may remain in the warehouse, by not more than one year at a time :

Provided further that where such goods are likely to deteriorate, the period referred to in the first proviso may be reduced by the Principal Commissioner of Customs or Commissioner of Customs to such shorter period as he may deem fit.

(2) Where any warehoused goods specified in clause (c) of sub-section (1) remain in a warehouse beyond a period of ninety days from the date on which the proper officer has made an order under sub-section (1) of section 60, interest shall be payable at such rate as may be fixed by the Central Government under section 47, on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said ninety days till the date of payment of duty on the warehoused goods :

{Emphasis Supplied}

14. As the importers have mis-declared the quantity of the goods in the above-mentioned Bill of Entry dated 09.02.2025, with intent to evade payment of proper duty, they are liable to penalty u/ s 112 of the Customs Act, 1962.

15. The Penalty under Section 112(a) of the Customs Act is applicable in the instant case as the goods are other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percentage of the duty sought to be evaded or five thousand rupees, whichever is higher

16. As the interest on the duty amount on all importers is not applicable as per Section 61 of the Customs Act, 1962 as the Goods were Warehoused and the time period is below 90 days, Section 61 of the Customs Act, 1962 provides exemption from Interest payment.

17. The redemption fine as per Section 125 of the Customs Act, 1962 is imposed on all the importers to the tune of Rs 25000/- each, as they don't have any maladies intention to import goods in discussion in excess. Further the importers through their CHA has intimated the same to the department on its own. In this instant case, excess quantity not found by dept. or any investigation agency rather importers through CHA informed dept. for appropriate duty. For this kind of excess issue Kandla Customs house issued a Public Notice also where upto5% quantity is allowed without any penal action. In this instant case the quantity is slightly above from 5% and considering the nature of commodity, liquid cargo i

find it appropriate to impose very less fine with liberal view kind of procedural mistake in natural course of business and parties *sui motto* intimated for appropriate duty.

18. In view of the aforesaid discussion and findings, I pass the following order: -

ORDER

I confirm and order to recover duty of Rs. 9,83,902/- (Nine lakhs Eighty-Three thousand Nine hundred and two only), from the following Taxpayers, and the penalty Redemption Fine and Interest details are as under.

SR NO	IMPORTER NAME	EXCESS. QTY	ASS. VALUE	TOTAL DUTY	Penalty under Section 112(a) @ 10%	Redemption Fine under Section 125 of the Customs Act, 1962	Interest as per Section 61(2) of the Customs Act, 1962
1	QUANTUM PETRO CHEM INDIA	28.180 MTS	1294921.26	317126.00	31713.00	Rs 25,000/-	NIL
2	INTERASIA ENTERPRISES	21.060 MTS	967744.56	237001.00	23700.00	Rs 25,000/-	NIL
3	MAHADEV TRADING	21.060 MTS	967744.56	237001.00	23700.00	Rs 25,000/-	NIL
4	NOYA INFRASTRUCTURE LLP	17.130 MTS	787154.05	192774.00	19277.00	Rs 25,000/-	NIL
	Total	87.430 MTS	4017564.43	983902.00	98390.00	Rs 1,00,000/-	NIL

1. I order for confiscation of goods viz 28.180 MTS of Mix Hydrocarbon OIL in bulk imported by M/s Quantum Petro Chem India having total Assessable value at Rs. 12,94,921/- under Section 111 (l) of Customs Act, 1962. I also impose a penalty of Rs.31,713 /- (Thirty One Thousand Seven Hundred thirteen only) (@ 10% of the duty evaded) under Section 112(a) of Customs Act, 1962. However, I give an option to the importers as mentioned in the table above to redeem the same on payment of Redemption Fine of Rs 25,000/- (Twenty Five Thousand only) under Section 125 of Customs Act, 1962.

2. I order for confiscation of goods viz 21.060 MTS of Mix Hydrocarbon OIL in bulk imported by M/s Interasia Enterprises having total Assessable value at Rs. 9,67,745/- under Section 111 (l) of Customs Act, 1962. I also impose a penalty of Rs. 23,700/- (Twenty Three Thousand Seven Hundred only)(@ 10% of the duty evaded) under Section 112(a) of Customs Act, 1962. However, I give an option to the importers as mentioned in the table above to redeem the same on payment of Redemption Fine of Rs. 25,000/- (Twenty Five Thousand only) under Section 125 of Customs Act, 1962.

3. I order for confiscation of goods viz 21.060 MTS of Mix Hydrocarbon OIL in bulk imported by M/s Mahadev Trading having total Assessable value at Rs.

9,67,745/- under Section 111 (l) of Customs Act, 1962. I also impose a penalty of Rs. 23,700/- (Twenty Three Thousand Seven Hundred only)(@ 10% of the duty evaded) under Section 112(a) of Customs Act, 1962. However, I give an option to the importers as mentioned in the table above to redeem the same on payment of Redemption Fine of Rs 25,000/- (Twenty Five Thousand only) under Section 125 of Customs Act, 1962.

4. I order for confiscation of goods viz 17.130 MTS of Mix Hydrocarbon OIL in bulk imported by M/s Noya Infrastructure LLP having total Assessable value at Rs. 7,87,154/- under Section 111 (l) of Customs Act, 1962. I also impose a penalty of Rs.19277/- (Nineteen Thousand Two Hundred Seventy Seven only) (@ 10% of the duty evaded) under Section 112(a) of Customs Act, 1962. However, I give an option to the importers as mentioned in the table above to redeem the same on payment of Redemption Fine of Rs 25,000/- (Twenty Five Thousand only) under Section 125 of Customs Act, 1962.

5. This order is passed without prejudice to the 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.

(Rakesh Kumar Jain)
Addl. Commissioner
Custom House, Kandla
Date: 27.03.2025

To,

Sr. No.	Party Name	OIO NO.
1	M/s QUANTUM PETRO CHEM INDIA	KDL/ADC/RKJ/28 /2024-25
2	M/s INTERASIA ENTERPRISES.	KDL/ADC/RKJ/29 /2024-25
3	M/s MAHADEV TRADING	KDL/ADC/RKJ/30 /2024-25
4	M/S NOYA INFRASTRUCTURE LLP	KDL/ADC/RKJ/31 /2024-25

Copy to:-

1. M/S Saarthee Shipping, Gandhidham – CB
2. A.C/D.C. (R.R.A.), Custom House, Kandla.
3. A.C/D.C. (TRC), Custom House, Kandla.

4. Guard file.