

	प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425	
A	File No.	CUS/APR/BE/MISC/3564/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AKM/185/2024-25
C	Passed by	Amit Kumar Mishra Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	07.11.2024
E	Noticee/Party/Importer/ Exporter	M/s Falcon Enterprises, Unit No. 148, Cabin WE02, Seat No-B, Business Park, NSP, Pitampura, Wazi, Delhi - 110034
F	DIN No.	20241171MO0000835847

1. यह अपील आदेश संबन्धित 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, हुडको 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/- रुपये 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 सं०-6 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 Falcon Enterprises situated at Unit No. 148, Cabin WE02, Seat No-B, Business Park, NSP, Pitampura, Wazi, Delhi - 110034 (herein after referred to as "*the said importer*") filed Bill of Entry No. 6089476 and 6089441 both dated 12.10.2024 through their CHA M/s. Saarthee Shipping Co. for import of total 6,93,505 KGs of "Mixed Hydrocarbon Oil" falling under CTH 27101990 having total assessable value Rs. 3,22,10,380/-.

2.1. The importer has imported 'Mixed Hydrocarbon Oil' in flexi bags in 35X20' containers vide BoE No. 6089476 and 6089441 both dated 12.10.2024. In the meantime, PUBLIC NOTICE NO. 08/2024 issued by this office, wherein it has been clarified that storage and transportation of Class A, B and C petroleum products is allowed in containers as defined in the Petroleum Rules, 2002 as amended. Further, Rule 5 and Rule 6 of the Petroleum Rules, 2002 provide the specifications of the containers for Petroleum Class A, B & C products. As per Rule 4 of the Petroleum Rules, 2002, Containers exceeding one litre in capacity for petroleum Class A and five litres in capacity for petroleum Class B or petroleum class C, shall be of a type approved by the Chief Controller. In light of the Petroleum (Amendment) Rules, 2024/ Petroleum Rules, 2002, PESO has clarified that flexi bags fitted in general purpose 20 feet containers are not covered under the definition of container falling under Petroleum Rules, 2002. Further, Petroleum and Explosives Safety Organisation (PESO) is not giving any license/permission for transportation of petroleum products in flexi bags fitted in general purpose 20 feet containers. Therefore, it is clarified via Public Notice No. 08/2024 that the petroleum products covered under the Petroleum Rules, 2002 framed under Petroleum Act, 1934 must be imported only in containers as specified under the provisions of the said Rules.

2.2. It is evident that the importer has imported Mixed Hydrocarbon Oil in Flexi Bags fitted in 20 feet containers which does not fall under the definition of containers as per Petroleum Rules, 2002, as amended. Therefore, the goods imported are in violation of the Petroleum Rules, 2002, as amended.

2.3. In view of above, it is evident that the said importer has violated the provisions of the Petroleum Rules, 2002, as amended. Therefore, it is evident that the said imported goods are being attempted to imported contrary to the prohibition imposed under the Petroleum Rules, 2002, as amended. Thus, the goods imported vide the said BoE are liable for confiscation under Section 111(d) of the Customs Act, 1962.

2.4. I also note that the said goods as such i.e Mixed Hydrocarbon Oil

imported under CTH 27101990 are not prohibited or restricted goods but since these are imported in flexi tanks contrary to Petroleum Rules, hence becomes prohibited. Therefore, the said importer is liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962.

3 Relevant Legal Provisions of Custom Act, 1962:

3.1 Section 2(25) defined the terms "Import Goods":

"Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

3.2. 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.]*

3.3 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;

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3.4 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, 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.*

SHOW CAUSE NOTICE & PERSONAL HEARING

4. The importer vide letter dated 07.11.2024 submitted their consent to decide the matter on merit as per the available records and further requested that they do not want any PH/SCN in the matter.

DISCUSSION AND FINDINGS

5. I note that the said importer vide letter dated 07.11.2024 submitted their consent to decide the matter on merit as per the available records and further requested that they do not want any PH/SCN in the matter. Therefore, the 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 points to be decided in the instant case are as to:

- i. Whether goods are liable for confiscation in terms of sub-section (d) of Section 111 of the Customs Act, 1962 or otherwise.
- ii. Whether importer is liable for penalty under section 112(a)(ii) of the Customs Act, 1962 or otherwise.

6. I have carefully gone through the records of the case; I find that the said importer M/s Falcon Enterprises has filed Bill of Entry No. 6089476 and 6089441 both dated 12.10.2024 through their CHA M/s. Saarthee Shipping Co. for import of "Mixed Hydrocarbon Oil" falling under CTH 27101990 filled in Flexi Bags in 35X20' containers. Further, I also take note of the PUBLIC NOTICE NO. 08/2024 issued by this office wherein it has been clarified that storage and transportation of Class A, B and C petroleum products is allowed in containers as defined in the Petroleum Rules, 2002 as amended.

7. I also take note of the letter dated 23.09.2024 issued by the Joint Chief Controller of Explosives, Nagpur, under No. G(40)Misc/Petroleum/2024, which states the following:

"As per sub-rule 1 of rule 2 of Petroleum Rules, 2002 the container is defined as;

'container means a receptacle for petroleum not exceeding 1,000 litres in capacity.'

As per sub-rule 1 of rule 2 of Petroleum Rules, 2002 the tank is defined as;

'tank means a receptacle for petroleum exceeding 1,000 litres in capacity.'

As per rule 33 of Petroleum Rules, 2002 petroleum in bulk shall not be carried by water, except in a ship or other vessel licensed for the carriage of petroleum in bulk by an officer appointed by the Central Government in this behalf and the petroleum shall be stored in such part of the ship or other vessel and in such manner as may be approved by general or special order by the licensing authority after consultation with the Chief Controller.

In view of rules mentioned above, I note that the flexi bags fitted in general purpose 20 feet containers are not covered under the definition of container falling under Petroleum Rules, 2002. Apart from this Petroleum and Explosives Safety Organization (PESO) is not giving any license/permission for transportation of petroleum products in flexi bags fitted in general purpose 20 feet containers”

8. In view of above, I take note that in light of the Petroleum (Amendment) Rules, 2024/ Petroleum Rules, 2002, PESO has clarified that flexi bags fitted in general purpose 20 feet containers are not covered under the definition of container falling under Petroleum Rules, 2002. Further, Petroleum and Explosives Safety Organisation (PESO) is not giving any license/permission for transportation of petroleum products in flexi bags fitted in general purpose 20 feet containers.

Therefore, the petroleum products covered under the Petroleum Rules, 2002 framed under Petroleum Act, 1934 must be imported only in containers as specified under the provisions of the said Rules.

9. I note from the available records that there is no dispute that the said goods have been imported in Flexi Bags fitted in 20 feet containers which does not fall under the definition of containers as per Rule 5 and 6 of Petroleum Rules, 2002, as amended. Therefore, the said goods are imported in violation of the Petroleum Rules, 2002, as amended.

10. In view of above, it is evident that the said importer has violated the provisions of the Petroleum Rules, 2002, as amended. Therefore, it is evident that the said imported goods are being attempted to be imported contrary to the prohibition imposed under the Petroleum Rules, 2002, as amended. Thus, the said imported goods cannot be allowed to be cleared.

11. As per Section 111(d) of the Customs Act, 1962, *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. The said are imported in contrary to the Rule 4, 5 and 6 of the Petroleum Rules, 2002, as amended. Thus, the goods imported vide the said BoE without fulfilling the specified condition for import are liable for confiscation under Section 111(d) of the Customs Act, 1962.

12. I further note that Section 125 of the Customs Act, 1962 provides that whenever confiscation of any good is authorized by the Customs Act, 1962, the officer adjudging it 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 fine as the said officer thinks fit. I find that the said provision makes it mandatory to grant an option to owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. In the instant case, I note that the said imported goods i.e. Mixed Hydrocarbon Oil imported under CTH 27101990 are not prohibited or restricted goods as such. I also note that there is no such mis-declaration in the documents submitted by the said importer. The only issue in the present case is that the imported goods are filled in Flexi Bags and flexi bags are not falling in the definition of containers as per Rule 5 and 6 of the Petroleum Rules, 2002, as amended. Thus, the said imported goods become prohibited as per Section 111(d) of the Customs Act, 1962. By considering the facts, I find it appropriate to grant an option to re-export the offending goods on payment of suitable fine in lieu of confiscation of the subject goods. I also take cognizance of the fact that such import of flexi-bags have been widely prevalent and this along with the facts discussed above provide the need to take a lenient view while deciding the quantum of penalty to be imposed.

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

ORDER

- i. I order to confiscate the goods viz. 6,93,505 KGs (Mixed Hydrocarbon Oil) having assessable value Rs. 3,22,10,380/- (for both BEs) imported vide the BoE(s) supra under Section 111(d) of the Customs Act, 1962.
- ii. As I have ordered for confiscation of the goods as mentioned in para (i), since goods not being prohibited/restricted, I give the importer to redeem the said goods on payment of redemption fine of Rs 15,000/- (Rs.Fifteen Thousand Only) under Section 125 of the Customs Act, 1962, only for re-export purpose.
- iii. I impose a penalty of Rs. 10,000/-(Rupees Ten thousand Only) on the

importer under Section 112 (a)(ii) of the Custom Act, 1962.

14. 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.

Signature of **ANIL KUMAR MISHRA**
Mishra
ADDITIONAL COMMISSIONER
Date: 07-11-2024 20:44:55
Custom House, Mundra

D ate: 07-11-2024

To,
M/s Falcon Enterprises,
Unit No. 148, Cabin WE02, Seat No-B,
Business Park, NSP, Pitampura, Wazi, Delhi – 110034

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
3. M/s. Saarthee Shipping Co. CHA of the said importer M/s. Falcon Enterprises.
4. Guard File.