

	OFFICE OF THE PRINCIPAL 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/INV/380/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/141/2024-25
C	Passed by	Arun Kumar, Additional Commissioner (Import), Custom House Mundra.
D	SCN No. & Date	The importer requested for waiver in PH/SCN vide letter dated 18.07.2024
E	Noticee / Party / Importer	M/s. Shree Ram Trading 111, Kutchh Platinum Arcade, No. 234 & 235, Mithirohar, Kachchh, Gujarat-3370240
F	DIN	20240971MO000091969E

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 Shree Ram Trading, 111 Kutchh Platinum Arcade, No. 234 & 235, Mithirohar, Kachchh, Gujarat - 3370240 (hereinafter referred to as 'the Importer') had filed Bill of Entry No. 9614795 dated 11.01.2024 for import of goods declared as 'Mixed Hydrocarbon Oil' under CTH-27101990 (MHO) through Customs Broker M/s Airtrax Freight Logistics, CB code BJOPM0241HCH004 (hereinafter referred as 'the CB'). The details of the Bill of Entry are as follows:-

Table-A

Bill of Entry No. & Date	9614795 dated 11.01.2024
Name of Importer	M/s Shree Ram Trading
IEC No. & Address	ASKPP1389F & 111, Kutchh Platinum Arcade, No. 234 & 235, Mithirohar, Kachchh, Gujarat-3370240
CB Name & Code	M/s Airtrax Freight Logistics (CHA- BJOPM0241HCH004)
Bill of Lading No. & Dt.	ACLJEAMUN524 dated 04.01.2024
Invoice No. & Dt.	PRIME-463/EXP/23
Description of Goods & CTH	Mixed Hydrocarbon Oil – CTH -27101990
Quantity (in KGS)	170840 KGS

2.1 Intelligence was developed by the SIIB Section, Custom House, Mundra to the effect that Petroleum Products are being imported at Mundra Port by way of mis declaration. Accordingly, consignment covered under BE No. 9614795 dated 11.01.2024 filed for import of Mixed Hydrocarbon Oil (MHO) was kept on hold for examination and further inquiry by the SIIB Section, Custom House, Mundra.

2.2. The consignment covered under BE No. 9614795 dated 11.01.2024 (total 10 containers/ISO Tanks) was examined on 18.01.2024 at the Mundra CFS in presence of authorized representative of CB firm and CFS. On cutting the seals, the tanks were found filled transparent liquid fluid. Total 3 representative samples from 10 containers were drawn to ascertain the exact composition of the imported goods declared as MHO and forwarded to the CRCL, Vadodara vide Test Memo No. 835 to 837 all dated 18.01.2024. To ascertain the nature, description & classification, representative samples were drawn during the examination. The Representative sample was sent to CRCL, Vadodara for testing vide Test Memo No. 835 to 837 both dated 18.01.2024.

2.3 The CRCL, Vadodara vide their reports dated 24.01.2024/received on 02.02.2024 has submitted the chemical analysis of the samples as under

TABLE-1

Sr. No.	Test Memo No & date	Report																		
1	835 dated 18.01.2024	<p>Result: It is composed of mixture of hydrocarbon oil more than 70% by weight.</p> <table border="1"> <tr> <td>Density at 15°C</td> <td>0.7123 gm/cm³</td> </tr> <tr> <td>Flash Point (Abel)</td> <td>Below Zero °C</td> </tr> <tr> <td>Kinematic Viscosity at 40°C</td> <td>0.679 CST</td> </tr> <tr> <td>Ash Content</td> <td>Nil</td> </tr> <tr> <td>Water Content</td> <td>Nil</td> </tr> <tr> <td>Sediment content</td> <td>Nil</td> </tr> <tr> <td>Distillation range IBP</td> <td>34.7°C</td> </tr> <tr> <td>FBP</td> <td>224.0°C</td> </tr> <tr> <td>Sulphur Content %</td> <td>0.226%</td> </tr> </table> <p>As 90% of the sample distilled below 210°C, it falls under the category of Light Oils and Preparations as per sub heading Note-3 chapter 27 of CTH.</p> <p>It is other than 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).</p>	Density at 15°C	0.7123 gm/cm ³	Flash Point (Abel)	Below Zero °C	Kinematic Viscosity at 40°C	0.679 CST	Ash Content	Nil	Water Content	Nil	Sediment content	Nil	Distillation range IBP	34.7°C	FBP	224.0°C	Sulphur Content %	0.226%
Density at 15°C	0.7123 gm/cm ³																			
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Ash Content	Nil																			
Water Content	Nil																			
Sediment content	Nil																			
Distillation range IBP	34.7°C																			
FBP	224.0°C																			
Sulphur Content %	0.226%																			
2	836 dated 18.01.2024	<p>Result:</p> <table border="1"> <tr> <td>Density at 15°C</td> <td>0.7145 gm/cm³</td> </tr> <tr> <td>Flash Point</td> <td>Below Zero °C</td> </tr> <tr> <td>Kinematic Viscosity at 40°C</td> <td>0.568 CST</td> </tr> <tr> <td>Ash Content</td> <td>Nil</td> </tr> <tr> <td>Water Content</td> <td>Nil</td> </tr> <tr> <td>Sediment content</td> <td>Nil</td> </tr> <tr> <td>Distillation range IBP</td> <td>35.5°C</td> </tr> <tr> <td>FBP</td> <td>226.9°C</td> </tr> <tr> <td>Sulphur Content %</td> <td>0.221%</td> </tr> </table> <p>As 90% of the sample distilled below 210°C, it falls under the category of Light Oils and Preparations as per sub heading Note-3 chapter 27 of CTH.</p> <p>It is other than 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,</p>	Density at 15°C	0.7145 gm/cm ³	Flash Point	Below Zero °C	Kinematic Viscosity at 40°C	0.568 CST	Ash Content	Nil	Water Content	Nil	Sediment content	Nil	Distillation range IBP	35.5°C	FBP	226.9°C	Sulphur Content %	0.221%
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		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	837 dated 18.01.2024	<p>Result:</p> <table border="1"> <tr> <td>Density at 15°C</td> <td>0.712gm/cm³</td> </tr> <tr> <td>Flash Point</td> <td>Below Zero °C</td> </tr> <tr> <td>Kinematic Viscosity at 40°C</td> <td>0.450 cst</td> </tr> <tr> <td>Ash Content</td> <td>Nil</td> </tr> <tr> <td>Water Content</td> <td>Nil</td> </tr> <tr> <td>Sediment content</td> <td>Nil</td> </tr> <tr> <td>Distillation range- IBP</td> <td>38.5°C</td> </tr> <tr> <td>95.0% distilled at</td> <td>218.2°C</td> </tr> <tr> <td>Sulphur Content %</td> <td>0.157 %</td> </tr> </table> <p>It is composed of mixture of hydrocarbon oil more than 70% by weight.</p> <p>As 90% of the sample distilled below 210°C, it falls under the category of Light Oils and Preparations as per sub heading Note-3 chapter 27 of CTH.</p> <p>It is other than 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).</p>	Density at 15°C	0.712gm/cm ³	Flash Point	Below Zero °C	Kinematic Viscosity at 40°C	0.450 cst	Ash Content	Nil	Water Content	Nil	Sediment content	Nil	Distillation range- IBP	38.5°C	95.0% distilled at	218.2°C	Sulphur Content %	0.157 %
Density at 15°C	0.712gm/cm ³																			
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Sediment content	Nil																			
Distillation range- IBP	38.5°C																			
95.0% distilled at	218.2°C																			
Sulphur Content %	0.157 %																			

4.1 From above test reports, it appears that the CRCL, Vadodara has testified the samples under the category of **Light Oils and Preparations** as per sub heading Note-3 chapter 27 of CTH. For ease of reference, relevant sub heading note is reproduced herein under:

CHAPTER 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

SUB-HEADING NOTES :

3. For the purposes of tariff items 2707 10 00, 2707 20 00, 2707 30 00 and 2707 40 00, the terms "benzol", "(benzene)", "toluol" (toluene)", "xylol" (xylenes)" and "naphthalene" apply to products which contain more than 50% by weight of benzene, toluene, xylenes or naphthalene, respectively.

4. For the purposes of sub-heading 2710 12, "light oils and preparations" are those of which 90 % or more by volume (including losses) distil at 210 °C according to the ISO 3405 method (equivalent to the ASTM D 86 method).

From the above, it is noticed that sub heading note-4 is relevant in this matter and also referred vide the CRCL's test report but it appears that in lab report, it is inadvertently mentioned as sub heading Note-3 instead of sub heading note-4.

4.2 In view of the above lab reports, it appears that the cargo merits the classification of Light oils and preparation falling under CTH-271012 excluding

the specific items mentioned above. Here, it is pertinent to mention that sub heading 271012 covers following five sub groups of items at 3 strokes (---) level having different import policy conditions, i.e. Free and restricted:

TABLE-2

CTH (6 digit)	Item description	Policy condition
271012	-- Light Oils and preparations	
	--- Naphtha	Free
	---solvent 60/80/50/120, 145/205(petroleum Hydrocarbon Solvent) as specified under standard IS 1745	Restricted (import only through State Trading Enterprises as per Policy condition (5) of Chapter 27)
	--- Motor Gasoline conforming to standard IS 2796, IS 17021, IS 17586 or IS 17076.	
	--- Aviation gasoline conforming standard IS 1604	
	--- Others	

4.3 The CRCL's reports do not specify the sub group of CTH-271012 at 3 strokes level in which the subjected sample would fall. Therefore, vide letter dated 04.03.2024, the CRCL, Vadodara was asked to specify the sub group of CTH-271012 in which the samples merit to be classifiable to ascertain the import policy conditions thereon. In response, the CRCL, Vadodara, vide letter dated 14.03.2024 has clarified the matter as under:

*"In this regard, on-going through the test findings and other technical literature in respect of test reports issued by this Laboratory on dated 24.01.2024 bearing Laboratory registration no RCL/Mundra/Imp/ 5268 ,5269,5270 vis-à-vis test memo no 835 to 837 all dated 18.01.2024, it is opined that **each of the three samples falls under category CTH Subheading 27101290 i.e. Other of CTH 271012 i.e. light oils and preparations**".*

4.4 The above test reports of the CRCL, Vadodara along with its clarification received from the CRCL, Vadodara vide letter dated 14.03.2023 were forwarded to the importer through email on 15.03.2024. In reply, vide email dated 19.03.2024, the importer has showed his disagreement of the Test Report of the CRCL, Vadodara and requested for re-testing of samples.

4.5 Thereafter, the competent authority granted permission of retesting of the samples in light of the Circular No. 30/2017-CUS dated 18.07.2017 and accordingly, samples were forwarded to the CRCL, Delhi, being the referral lab, vide Re-Test Memo dated 02.05.2024 and subsequent reminder dated 04.07.2024.

4.6 The CRCL, Delhi, vide letter dated 11.07.2024 has reported as under
"Each of three samples is mainly composed of mixture of hydrocarbon oil, having mineral oil content more than 70% by weight.

In each of the three samples 90% of the sample distilled below 210°C, hence each of the three samples falls under the category of Light Oils and Preparations as per Customs Tariff sub heading Note-4 chapter 27 of CTH.

Each of three samples u/r also does not meet the requirement of Base oil (as per IS 18722 (part-1):2024), Automotive diesel fuel (IS:1460:2017), Light Diesel Oil (IS:15770:2008), Petroleum Hydrocarbon Solvents (IS: 17793:2022), Kerosene (IS:1459:2018), Kerosene Intermediate (as per IS:17793:2022), Biodiesel, Diesel Fuel Blend B8 to B20 (as per IS: 16531:2022), New insulating Oils (as per IS:335:2018) and High Speed Diesel Fuel (as per IS: 16861:2018)."

4.7 In view of the above, it appears that the impugned imported goods fall under the category of Light Oil and Preparations as per Customs Tariff Sub Heading Note-4 of Chapter-27 (271012). Further, as per exclusions of items mentioned in the report received from the CRCL, Delhi, the samples appear as to merit classification under the CTH subheading 27101290 as "Other light oils and preparation" as reported and subsequently clarified by the CRCL, Vadodara and allowed for import only through State Trading Enterprises (STE) as per Policy condition (5) of Chapter 27.

4 . 8 Here, it is pertinent to mention that CTH -subheading 27101290, i.e. other Light Oils and Preparation is a restricted item and import of the same is allowed only through State Trading Enterprises as per Policy condition (5) of Chapter 27 as illustrated in Table-2 above.

Notification No. 08/2023 dated 29.05.2023

Subject: Syncing of ITC (HS), 2022- Schedule-I (Import Policy) with Finance Act, 2023 (No. 8 of 2023) dated 31.03.2023 and Foreign Trade Policy, 2023-reg.

4. The List of ITC (HS) specific Policy conditions and chapter specific Policy Conditions under ITC (HS)2022, Schedule-I (Import Policy) amended in sync with Foreign Trade Policy 2023 is annexed herewith (Annexure-III)

ANNEXURE-III

(Annexure referred to in DGFT Notification No. 08/2023 dated 29.05.2023 regarding 'Indian Trade Classification (Harmonised System) of Import Items, 2022 [ITC (HS), 2022])'

<i>Chapter</i>	<i>Policy Condition</i>	<i>Existing Condition</i>	<i>Revised Condition</i>
27	5	<i>Import allowed through IOC subject to para 2.20 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated P23015/1/2001-MKT.</i>	<i>Import allowed through IOC subject to para 2.21 of Foreign Trade Policy, except for the companies who have been granted rights for marketing of transportation fuels in terms of Ministry of P&NGs Resolution No. P23015/1/2001-MKT. Dated 8.3.2002 including HPCL,</i>

		Dated 8.3.2002 including BPCL and IBP who have been marketing transportation fuels before this date
		HPCL, BPCL and IBP who have been marketing transportation fuels before this date.

4.9 Further, as per Para 2.21 of the FTP-2023, **State Trading Enterprises** have been defined as under:

2.21 State Trading Enterprises (STEs)

(a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and / or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.

(b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.

(c) DGFT may, however, grant an authorisation to any other entity to import or export any of the goods notified for exclusive trading through STEs.

4.10 Here, it is pertinent to mention that list of State Trading Enterprises (STE) is mentioned in the Appendix-2J as notified by the DGFT. As per the aforesaid list, the importer is not a STE and hence, not allowed to import the impugned goods.

4.11. From the above, it appears that vide BE No. 9614795 dated 11.01.2024, a restricted item, i.e. Others of Light Oils and Preparation falling under CTH-27101290 has been attempted to import in guise of Mix Hydrocarbon Oil (CTH-27101990).

5.1 The test report received from the CRCL, Delhi was forwarded to the importer vide email dated 12.07.2024. Further, Summons dated 12.07.2024 have also issued to the importer. In response, Shri Nishit Bharatbhai Popat, son Authorised representative of M/s Shree Ram Trading appeared on 18.07.2024 and in his statement recorded on the same day has, *inter-alia*, stated as under:

- *He was the authorised representative of M/s Shree Ram Trading situated at Office No 111, Kutch Arcade, Survey No 234/1 & 235, Village Mithorohar, Gandhidham, Kutch-370240 and his father Shri Bharatbhai Popat is proprietor of the firm.*
- *He was looking after management and documentation in the firm since April 2023.*
- *On being perused the print out of Bill of Entry No 9614795 dated 11.01.2024 he stated that consignment of Mixed Hydrocarbon Oil has been imported under the said Bill of Entry. This Bill of Entry was filed by CHA firm M/s Airtrax Freight Logistics -BJOP0241HCH004.*
- *He agreed with the examination report and drawl of samples from the consignments.*

- *He perused the test memo No 835, 836 and 837 all dated 18.01.2024 and test reports dated 24.01.2024 received from CRCL, Vadodara wherein it had been noticed that the samples fall under the category of Light oils and preparations.*
- *He also perused letter F.No CUS/SIIB/14/2024-SIIB-O/o Pr Commr Cus_Mundra dated 04.03.2024 issued to CRCL Vadodara for clarification regarding the test reports of test memo No 835, 836 and 837 all dated 18.01.2024 and subsequent clarification dated 14.03.2024 received from CRCL Vadodara in respect of test reports for test memo No 835, 836 and 837 all dated 18.01.2024 wherein it had been clarified by the CRCL Vadodara that all the three samples fall under the CTH subheading - 27101290 i.e. Other of CTH 271012 i.e. Light Oils and preparation.*
- *He further stated that initially, after getting the information regarding the aforementioned test results, they consulted with their supplier and did not agree with the findings of the test results, as such they requested for re-test of the consignment vide letter dated 17.03.2024 forwarded through email dated 19.03.2024.*
- *He perused the re-test reports received from the CRCL, Delhi in respect to the above samples and showed his agreement with the fact that as per the flash point of the item reported by the CRCL, Vadodara, the imported item does not merit the description of Mixed Hydrocarbon Oil and rightly classifiable under the category of Light Oil and preparation under CTH- 27101290*
- *He further stated that after getting information about the re-test result of the samples, they contacted their supplier and in response their supplier vide letter dated 16.07.2024 informed that the material received by them was light Mix Hydrocarbon instead of their ordered product Mixed Hydrocarbon Oil and informed them to proceed for the re-export of the cargo.*
- ***He showed his agreement with the fact that as per the test reports and subsequent clarification from CRCL Vadodara and re-test reports received from CRCL, Delhi; the product tried to be imported under the BE No 9614795 dated 11.01.2024 is Light Oil and preparation under CTH- 27101290 and subject to import restrictions thereof.***
- *They had ordered for MHO, but as per the test report the sample tested for Light Oil and preparation under CTH- 27101290. He does not have any information as to how the sample tested for Light Oil and preparation.*
- ***That they accept the test results and requested to allow for re-export of the cargo.***
- ***They are also ready to pay applicable fine and penalty as per the Customs law in this matter.***
- *That payment regarding the consignment has not been made till date. Payment was to be made after the clearance of the cargo. Further after the receipt of the re-test reports their supplier has asked them to re-export the cargo.*

SHOW CAUSE NOTICE & PERSONAL HEARING

5.2 Further the importer vide letter dated 18.07.2024 has reiterated that they agree with the findings of the test results and have requested for re-export of the cargo and informed that they do not want any SCN/PH in the matter and they are ready to pay applicable fine and penalty in the matter.

6. Relevant Legal Provisions:

6.1 Relevant provisions of law relating to import of goods in general and the impugned goods in particular, the policy and rules relating to the import of impugned goods, the liability of the goods to confiscation and liability of the persons concerned to penalty for improper/illegal importation, under the provisions of the Customs Act, 1962 read with the provisions of Foreign Trade Policy 2023 (as amended) are detailed herein under.

6.2 Foreign Trade (Development and Regulation) Act, 1992:

(i) Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 provides inter-alia, for formulation of the export and import policy by the Central Government from time to time.

(ii) Section 7 of the Foreign Trade (Development and Regulation) Act, 1992 states that no import can take place without a valid IEC number unless otherwise exempted.

(iii) Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 states that no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force.

6.3 As per the provisions contained in the Para 2.04 of Foreign Trade Policy, 2023, DGFT may specify procedures to be followed by an exporter or importer for the provisions of Foreign Trade (Development and Regulation) Act, the rules and the orders made there under.

6.4 The policy provisions mentioned in the Indian Trade Classification (Harmonised System) of Import in the Schedule-1 are binding in terms of the FTP-2023, Chapter-2 and paragraph-2.02 thereto.

6.5 As per para 4.18 (ii) of the FTP-2023, Items reserved for imports by STEs cannot be imported against Advance Authorisation / DFIA.

6.6 In view of the above as per the above provisions of FTP and Hand Book of Procedure, the import of impugned goods, 'Other Light Oils and Preparations' and classifiable under CTH-27101290, being the canalised item is subjected to the conditions imposed thereunder and allowed to be imported through STEs only. Import of this item by any other parties is in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods as '**Restricted**' for import into India.

CUSTOMS ACT, 1962

6.7 As per **Section 2 (33)** of the Customs Act, 1962 '**prohibited goods**' means *any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*

6.8 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;*

6.9 **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.

6.10 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:

(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;

(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.

6.11 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.

6.12 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.

DISCUSSION AND FINDINGS

7. M/s Shree Ram Trading, has mis-classified the imported goods under the CTH-27101990 with description as 'Mixed Hydrocarbon Oil. However, it appears that the imported goods to be classified under CTH-27101290.

7.1. Thus, the issue is to be decided is about the classification of the imported goods i.e. as to whether the goods imported falls under CTH 27101990 or under 27101290. I further note that the importer has informed vide letter dated 18.07.2024 that they do not want any SCN/PH in the matter. They have agreed with the test results and requested for re-export of the cargo. Thus, the principle of natural justice has been followed.

7.2. I take note of the test reports receive from the CRCL Vadodara dated 29.01.2024, 04.03.2024 and CRCL Delhi's test report dated 11.07.2024, mentioned supra. I also note that the said importer has also agreed with the results of the test reports and requested to re-export the cargo. Thus, there is no dispute that the bill of entry has been filed with the incorrect CTH 27101990 instead of correct CTH 27101290.

7.3. I find that the importer had filed the bill of entry with incorrect particulars as discussed above. 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, goods are restricted for import and the importer do not possess the status of State Trading Enterprises (STEs) for FTP purpose, as provided vide Appendix 2J of the Foreign Trade Policy 2023; hence, the subject goods appeared prohibited in nature and the consignment covered under the said Bill of Entry appeared liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962. Therefore, the imported goods are required to be re-classified under CTH-27101932 and the goods having Assessable Value of 73,40,568/- (Seventy Three Lakh Forty Thousand Five Hundred Sixty Eight Only) are liable for confiscation under Section 111(d) & 111 (m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112 a(i) of Customs Act 1962.

7.4. As mentioned supra, it is absolutely clear from the test reports received from the CRCL Vadodara and New Delhi supra, that the goods imported are ***Light Oils and preparations under CTH- 27101290 and not Mixed***

Hydrocarbon Oil – CTH -27101990.

7.5. 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".

7.6. 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. Considering these facts and request of the importer for re-export of the goods, I find it appropriate to grant an option to pay redemption fine in lieu of confiscation of the subject goods with condition to re-export of the said goods.

7.7 I further find that in the instant case the importer didn't contested the view of the department and accepted that they are in receipt of different specification goods and agreed to re-export the said goods to their original supplier.

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

ORDER

- a. I order to reject the declared description ie 'Mixed Hydrocarbon Oil', classification i.e. 27101990 of the imported goods and order to classify the imported goods under CTH 27101290 with description 'Light Oils and preparations' under Section 17 of the Customs Act, 1962.
- b. I order for confiscation of the goods imported vide Bill of Entry No. 9614795 dated 11.01.2024 declared as " Mixed Hydrocarbon Oil" weighing 170.84 MTS having Assessable Value of Rs. 73,40,568/- (Seventy Three Lakh Forty Thousand Five Hundred Sixty Eight Only) under Section 111(d) & 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/- (Rs. Eight lakhs Only) under Section 125

of the Customs Act, 1962 for re-export purpose only.

- c. I impose a penalty of Rs. 4,00,000/- (Rs. Four Lakhs Only) on the said importer under Section 112 (a)(i) of the Custom Act, 1962.
- d. I allow the importer to re-export the subject goods imported vide BE No. 9614795 dated 11.01.2024 declared as " Mixed Hydrocarbon Oil" weighing 170.84 MTS having Assessable Value of Rs. 73,40,568/- (Seventy Three Lakh Forty Thousand Five Hundred Sixty Eight Only), back to the overseas supplier with condition to pay all applicable fine & penalty imposed herein. Further, as per section 125 of the Customs Act, 1962, if the importer does not pay the fine within a period of one hundred and twenty days from the date of the order, option to redeem the said goods shall become void, unless an appeal against the said order is pending and the said impugned goods would be liable for disposal as per instructions and guidelines in CBIC Disposal Manual, 2019. The cost of destruction shall be borne by the importer.

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: 20-09-2024 15:51:06 Arun Kumar

Additional Commissioner

Import Section, CH Mundra

DIN:

To,

M/s. Shree Ram Trading
111, Kutchh Platinum Arcade,
No. 234 & 235, Mithirohar,
Kachchh, Gujarat-3370240

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 Manager, Mundra CFS, MP & SEZ, Mundra
5. Guard File.