



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
 MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
 Phone No. 02838-271029/423 FAX No. 02838-271425
 Email : importsectionmundra@gmail.com

A	File No.	CUS/APR/BE/SAO/21/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/59/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	06.06.2024
E	Noticee/Party/ Importer/ Exporter	M/s. Sams Fueltech LLP, GF Office No. 6, Mangaldeep Complex, Diwanpara Road, Opp. Barton Library, Bhavnagar, Gujarat-364001
F	DIN No.	20240671MO00008328A4

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 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, 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.

OIO - MCH/ADC/AK/59/2024-25
DIN-20240671MO00008328A4

Brief Facts of the case

1. M/s Sams Fueltech LLP (IEC No. ADXFS0385C) situated at GF Office No. 6, Mangaldeep Complex, Diwanpara Road, Opp. Barton Library, Bhavnagar, Gujarat-364001 ('Importer' for the sake of brevity) have filed Bill of Entry No. 9616015 dated 11.01.2024 for import of purportedly said to be Mixed Hydrocarbon Oil (CTH-27101990) through Customs Broker- M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd (AAGCS2827JCH004) at Mundra Port.

2. 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. 9616015 dated 11.01.2024 filed for import of Mixed Hydrocarbon Oil (MHO) was kept on hold for examination.

3.1 Accordingly, the consignment covered under BE No. 9616015 dated 11.01.2024 was examined on 16.01.2024. During examination representative samples were drawn to ascertain the exact composition of the imported goods declared as MHO and forwarded to the CECL, Vadodara vide Test Memo No. 833 and 834 both dated 16.01.2024.

3.2 The Lab Examiner, CECL Vadodara vide their reports RCL/MUNDRA/IMP/5261 & RCL/MUNDRA/IMP/5262 both dated 24.01.2024 has submitted the chemical analysis of the samples as under:

Sr. No.	Test Memo No. & date	Test Report No. & date	Outcome of the report
1	833 dated 16.01.2024	RCL/MUNDRA/IMP/5261	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.7863 gm/ml</p> <p>Flash Point (Abel): 36.2 °C</p> <p>K.V. at 40°C: 1.1 Cst</p> <p>Ash Content: Nil</p> <p>Water content: Nil</p>

			<p>Sediment content: Nil</p> <p>Distillation range:</p> <p>IBP=142.9°C</p> <p>200°C Percent v/v: 70°C</p> <p>95% Distilled at temp: 243.3°C</p> <p>FBP: 250.4°C</p> <p>Sulphur Content: 0.038%</p> <p>Smoke point: 21 mm</p> <p>On the basis of above tested parameters samples u/r meets the requirements of Kerosene (IS 1459:2018)</p>
2	834 dated 16.01.2024	RCL/MUNDRA/IMP/5262	<p>It is composed of mixture of hydrocarbon oil more than 70% by wt. having following constant</p> <p>Density at 15°C: 0.788 gm/ml</p> <p>Flash Point (Abel): 36.3 °C</p> <p>K.V. at 40°C: 1.1358 Cst</p> <p>Ash Content: Nil</p> <p>Water content: Nil</p> <p>Sediment content: Nil</p> <p>Distillation range:</p> <p>IBP=144.8°C</p> <p>200°C Percent v/v: 65°C</p> <p>95% Distilled at temp: 245.7°C</p> <p>FBP: 256.3°C</p> <p>Sulphur Content: 0.044%</p> <p>Smoke point: 21 mm</p> <p>On the basis of above tested parameters samples u/r meets the requirements</p>

		o f Kerosene (IS 1459:2018)
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In view of the reports dated 24.01.2024 submitted by CECL, Vadodara, it is found that the cargo imported vide BE No. 9616015 dated 11.01.2024 is **meeting the requirements of Kerosene (IS:1459:2018)** falling under CTH-27101932 which is a restricted item and allowed to be imported through State Trading Enterprise (STE) as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I.

3.3 The relevant policy conditions are being reproduced hereinunder:

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]]'

Chapter	Policy Condition	Existing Condition	Revised Condition
27	5	<p>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.</p> <p>Dated 8.3.2002 including HPCL, BPCL and IBP who have been marketing</p>	<p>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, BPCL and IBP who have been marketing</p>

		<i>have been marketing transportation fuels before this date</i>
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3.4 Further, as per Para 2.21 of the FTP-2023, State Trading Enterprises have been defined as under:

Import / Export through State Trading Enterprises

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.

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

3.6 Further, as per Handbook of Procedures-2023, Import of Restricted Items are governed by a series of procedures as under:

IMPORT OF RESTRICTED ITEMS:

2.47 Import /Export of Restricted Items

(a) An application for grant of an Authorisation for import or export of items mentioned as 'Restricted' in ITC (HS) may be

made online to DGFT Hqrs in ANF 2M /ANF 2N respectively along with documents prescribed therein.

(b) An application for amendment in import or export Authorisation has to be made online to DGFT Hqrs.

2.48 EXIM Facilitation Committee

(a) Restricted item Authorisation may be granted by DGFT or any other RA authorised by him in this behalf. DGFT / RA may take assistance and advice of a Facilitation Committee while granting authorisation. The Assistance of technical authorities may also be taken by seeking their comments in writing. Facilitation Committee will consist of representatives of Technical Authorities and Departments / Ministries concerned.

(b) Import/Export authorisations for a restricted item, if so, directed by the competent authority, shall be issued for import/ Export through one of the sea ports or air ports or ICDs or LCS, as per the option indicated, in writing, by the applicant. Authorisation holder shall import at the port specified in the Authorisation and thereafter all imports against said authorisation shall be made only through that port, unless the authorisation holder obtains permission from customs authority concerned to import through any other specified port.

(c) EXIM Facilitation Committee (EFC) shall normally meet once every month. Where a case has been deferred in EFC for want of comments from the Technical Authorities and Departments /Ministries concerned but subsequently, NOC(s) has / have been received from the concerned agency(ies) with no divergence in views, authorisation shall be issued with the approval of Chairman, EFC and the case shall be brought before EFC in its subsequent meeting for approval on ex-post facto basis

As per the above provisions of FTP and Hand Book of Procedure, the import of Kerosene, being the canalised item is subjected to the conditions imposed thereunder and allowed to be imported through STEs only. Import of Kerosene 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 '**Prohibited**' for import into India.

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

4.1 Furthermore, a statement of Shri Murtuza Mutsafabhai Ghoghari, Partner in M/s Sams Fueltech LLP was recorded on 29.01.2024, wherein he has inter-alia stated as under:

- *He was partner in M/s Sams Fueltech LLP (IEC-ADXFS0385C) situated at GF, Office No 6, Mangaldeep Complex, Diwanpara Road, Opp Barton Library, Bhavnagar and engaged in import and trading of various Petroleum products since October 2023.*
- *He was looking after all the sales, purchase, documentation and finance related work in the firm.*
- *M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd was their Customs Broker.*
- *They were importing petroleum products in the firm M/s Sams Fueltech LLP and further selling the same in domestic market. Other than that, they were also purchasing and selling other petroleum products from local traders and selling the same in domestic market. They were importing Mixed Hydrocarbon Oil and Fuel Oil and also purchasing the same from local traders. Their domestic purchased products include Furnace Oil, Base Oil and Industrial Solvent.*
- *Total 6 bills of entry have been filed till date regarding the import consignment in M/s Sams Fueltech LLP (IEC-ADXFS0385C).*
- *Consignment of Mixed Hydrocarbon Oil (MHO) covered under Bill of entry No 9616015 dated 11.01.2024 was imported from Kuwait. The declared value of the consignment was Rs 45,61,064/-.*
- *Supplier of the said consignment was M/s SMB Global General Trading Co W.L.L, Kuwait. They have imported 3 consignments under 3 bills of entry (26 container) in which one consignment under Bill of entry 8333758 dated 17.10.2023 was of MHO and other two 8938978 dated 25.11.2023 and 8984781 dated 29.11.2023 were of Fuel Oil.*
- *Advance payment amounting to USD 53,535/- was done in favor of M/s SMB Global General Trading Co W.L.L, Kuwait vide swift transaction dated 21.12.2023.*
- *On being asked, he shown the agreement with the examination report dated 16.01.2024.*
- *On being shown the test reports dated 24.01.2024, he agreed that as per the test reports the goods imported under the said consignment*

*meets the requirement of **Kerosene (IS 1459:2018)** falling under Chapter Heading 27101932 and subject to import restrictions.*

- *He further stated that they ordered for MHO as per Purchase Order dated 15.01.2024.*
- *He further stated that the aforementioned consignment was to be sold to some other trader and the said items is to be used in Boiler plants and DG SET in various industries.*
- *He was not having port load analysis report/port load documents and photographs of loading of consignments.*

4.2 Further, a statements of Shri Pradeep Prembhai Nainvaya, Branch Manager in M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd was recorded on 31.01.2024, wherein, he, inter-alia stated that

- *He is the Branch Manager of M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd which is a CHA firm engaged in the business of clearance of import and export cargo from customs Nhava Sheva, Mundra and Kandla port since 2011 Firm was started in 2011*
- *that M/s. Shivam Clearing Agency (Mumbai) Pvt Ltd was working as CHA for M/s Sams Fueltech LLP (IEC-ADXFS0385C); that they were filing all the customs related documents for import of consignment on behalf of M/s Sams Fueltech LLP for clearance of consignment related to import of Mixed Hydrocarbon Oil and Fuel Oil.*
- *that Bill of entry No 9616015 dated 11.01.2024 was filed for import of Mixed Hydrocarbon Oil (MHO from Kuwait. The declared value of the consignment is Rs 45,61,064/-.*
- *He received Rs 1000/- per container for filing the bill of entry through cash voucher from C.K. Shipping whose concerned person is Shri Ranjit Behara. Shri Ranjit Behara contacted him regarding the filing of documents and clearance of cargo pertaining to said Bill of Entry.*
- *The consignment under the Bill of entry No 9616015 dated 11.01.2024 was supplied by M/s SMB Golden General Trading Co. W.L.L, Kuwait.*
- *That advance payment amounting to USD 53,535/- was done in favour of M/s SMB Golden General Trading Co LLP, Kuwait vide swift transaction dated 21.12.2023 by Shri Murtuza Mustafabhai Ghoghari, Partner in M.s Sams Fueltech LLP.*
- *He shown his agreement with the examination report dated 16.01.2024 done at Landmark CFS.*

- *He shown his agreement with statement dated 29.01.2024 of Shri Murtuza Mustafabhai Ghoghari, Partner in M.s Sams Fueltech LLP.*
- *On being shown the test reports dated 24.01.2024 for test memo No 833/ 16.01.2024 and 834 dated 16.01.2024 he shown his agreement with the fact that as per the test reports the goods imported under the said consignment meets the requirement of Kerosene (IS 1459:2018).*
- *On being asked to comment on the fact that the goods were declared as MHO (Mixed Hydrocarbon Oil) classified under Chapter Heading 27101990, however it is evident from the test report dated 24.01.2024 from CRCL Vadodara that the product is 'Kerosene (IS 1459:2018).' falling under Chapter Heading 27101932. Further, the goods falling under the CTH 27101932 are restricted and allowed to be imported through State Trading Enterprise (STE) only per the policy condition-5 of the Chapter 27 of ITC (HS), Schedule-I., he stated that as informed e by importer, they ordered for MHO, but as per the test report the sample is tested for '**Kerosene (IS 1459:2018)**'.*
- *He was not having port load analysis report/port load documents and photographs of loading of consignments.*

4.3 Further, a statements of Shri Ranjit Behera, authorised representative in Shivam Clearing Agency (Mumbai) Pvt Ltd was recorded on 31.01.2024, wherein, he, inter-alia, shown his agreement with the facts stated by Shri Murtuza Mutsafabhai Ghoghari, Partner in M/s Sams Fueltech LLP recorded on 29.01.2024 and Shri Pradeep Prembhai Nainvaya, Branch Manager in M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd. recorded on 31.01.2024 and further stated that he was associated with Shri Pradeep Prembhai Nainvaya for filling of BE No. 9616015 dated 11.01.2024 and he received around Rs 12000-15000 per container from Murtuza Mustafabhai Ghoghari, partner in M/s. Sams Fueltech LLP for clearance of the cargo.

4.4 In view of the above, since the test reports received from the CRCL, Vadodara testified the samples as **Kerosene (IS:1459:2018) falling under CTH-27101932 which is a restricted item and allowed to be imported through State Trading Enterprise (STE) as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I.** Accordingly, the goods covered under BE No. 9616015 dated 11.01.2024 was found liable for confiscation under Section 111 (d),(m) & (o) of the Customs Act, 1962 and hence placed under seizer under Section 110 of the Act, ibid vide seizure memo dated 01.02.2024 and handed over to the custodian of Landmark

CFS, APSEZ for safe custody vide Surpurnama dated 01.02.2024.

5. M/s Sams Fueltech LLP vide letter dated 23.02.2024 has requested for permission to re-export the cargo to the supplier as on communication received from their foreign supplier, they have come to notice that the said consignment was destined to another country but the same was shipped to the importer by mistake and the exporter is ready to take back the cargo. Further, M/s. Sams Fueltech LLP has also submitted that they are ready to pay fine and penalty, if any arises under the Customs Law. The importer has also submitted a letter said to be issued by the exporter, M/s SMB Golden General Trading communicating therein for recalling the cargo covered under BL No. 234247393 dated 09.01.2024 (BE No. 9616015 dated 11.01.2024). Further, the importer vide letter dated 18.04.2024 has submitted that they do not want any PH and SCN and ready to pay the applicable fine and penalty.

LEGAL PROVISIONAS:

6.1 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.*

6.2 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 . 3 **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.

6.4. 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.

6.5 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.

6.6 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. SHOW CAUSE NOTICE AND PERSONAL HEARING:-

M/s Sams Fueltech LLP vide letter dated 23.02.2024 has requested for permission to re-export the cargo to the supplier as on communication received from their foreign supplier, they have come to notice that the said consignment was destined to another country but the same was shipped

to the importer by mistake and the exporter is ready to take back the cargo. Further, M/s Sams Fueltech LLP has also submitted that they are ready to pay fine and penalty, if any arises under the Customs Law. The importer has also submitted a letter said to be issued by the exporter, M/s SMB Golden General Trading communicating therein for recalling the cargo covered under BL No. 234247393 dated 09.01.2024 (BE No. 9616015 dated 11.01.2024). Further, the importer vide letter dated 18.04.2024 has submitted that they do not want any PH and SCN and ready to pay the applicable fine and penalty.

8. DISCUSSION AND FINDINGS

8.1 M/s Sams Fueltech LLP (have filed Bill of Entry No. 9616015 dated 11.01.2024 for import of purportedly said to be Mixed Hydrocarbon Oil (CTH-27101990) through Customs Broker- M/s Shivam Clearing Agency (Mumbai) Pvt. Ltd (AAGCS2827JCH004) at Mundra Port.

8.2 I find that the consignment covered under BE No. 9616015 dated 11.01.2024 was examined on 16.01.2024 by SIIB Section. During examination samples have been drawn and sent to CECL, Vadodara to ascertain the exact composition of the imported goods. The CECL, Vadodara has reported that the samples meet the **requirements of Kerosene (IS:1459:2018)** falling under CTH-27101932 which is a restricted item and allowed to be imported through State Trading Enterprise (STE) as per policy condition-5 of the Chapter 27 of the ITC (HS), Schedule-I.

8.2 From the above discussion and evidences available on record, I find it evident that a canalised item, i.e. Kerosene (IS:1459:2018) falling under CTH-27101932 was attempted to be imported vide BE 9616015 dated 11.01.2024 by way of mis declaring the goods as Mixed Hydrocarbon Oil Under CTH-27101990. As per the provisions of FTP and Hand Book of Procedure, the import of Kerosene, being a canalised item is subjected to the conditions imposed thereunder and allowed to be imported through STEs only. Import of Kerosene 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 '**Prohibited**' for import into India. The importer is neither a STE nor has procured this material from the STEs as prescribed under the FTP. The partner of the importer firm, in his statement recorded during the investigation and letters submitted

subsequently has categorically admitted the facts that the imported material is Kerosene.

In the instant case, 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. The importer has attempted to import a canalised item by way of mis declaring the same as Mixed Hydrocarbon Oil and thus, by their acts of omission and commission rendered imported goods having declared value of Rs. 45,61,065/- liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962.

8.3 From the discussion in para supra, I find that the importer M/s Sams Fueltech LLP had attempted to import a canalised item, **Kerosene** in guise of Mixed Hydrocarbon Oil, 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 smuggled these goods into India. The said acts of omission and commission on the part of the M/s. Sams Fueltech LLP have rendered themselves liable for penalty under the provisions of Section 112(a)(i) of the Customs Act, 1962.

8.4. 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".*

8.5. 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 assessment of goods.

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

Order

9.1 I reject the declared description of 'Mixed Hydrocarbon Oil' and declared classification under CTH-27101990 of the goods imported vide Bill of Entry No. 9616015 dated 11.01.2024 and order to classify the description of the goods imported vide Bill of Entry No 9616015 dated 11.01.2024 under CTH 27101932 with description as Kerosene (IS:1459:2018) and order to reassess the Bill of Entry No. 9616015 dated 11.01.2024 under Section 17 of the Customs Act,1962.

9.2. I order for confiscation of the goods imported vide Bill of Entry No. 9616015 dated 11.01.2024 declared as Mixed Hydrocarbon Oil having declared weight 107.070 MTs and declared value of Rs. 45,61,064/- covered under Section 111 (d), (m) & (o) 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.5,50,000/- (Rs. Five lakh Fifty Thousand only) under Section 125 of the Customs Act, 1962.

9.3 I impose a penalty of Rs.1,50,000/- (Rs. One Lakh Fifty Thousand Only) on the importer M/s. Sams Fueltech LLP under Section 112 (a)(i) of the Custom Act, 1962.

9.4 I also allow the importer to re-export the subject goods imported vide BE No. Bill of Entry No. 9616015 dated 11.01.2024 declared as Mixed Hydrocarbon Oil having declared weight **107.070 MTs** and declared value of **Rs. 45,61,064/-**, 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.

10. 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: 06-06-2024 15:16:18
(Arun Kumar)

Additional Commissioner
Import Section, CH Mundra

To,

M/s. Sams Fueltech LLP, GF Office No. 6,
Mangaldeep Complex, Diwanpara Road,
Opp. Barton Library, Bhavnagar,
Gujarat-364001

1. The Deputy Commissioner of Customs (SIIB), Custom House, Mundra
2. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
3. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
4. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
5. The Manager, Landmark CFS
6. Guard File.