



OFFICE OF THE COMMISSIONER

CUSTOM HOUSE, KANDLA

NEAR BALAJI TEMPLE, NEW KANDLA

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DIN- 20240671ML000000DD66

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| A | File No. | GEN/ADJ/ADC/1162/2024-Adjn-O/o Commr-Cus-Kandla |
| B | Order-in-Original No. | KDL/ADC/DPB/10/2024-25 |
| C | Passed by | Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla. |
| D | Date of Order | 28.06.2024 |
| E | Date of Issue | 28.06.2024 |
| F | SCN NO. & Date | Waiver of Show Cause notice |
| G | Noticee / Party / Importer / Exporter | M/s. Accord Chemical Corporation, A-405 & B-705, Western Edge II, BLD, CCI Comp B/h Metro Off Western E. Highway, Borivali East, Mumbai, 400066 |

1. यह मूल 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 मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्कअधिनियम 1962 की धारा 128A 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:

“ सीमाशुल्कआयुक्त (अपील),

7 वीं मंजिल, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”

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 be 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 मदसं-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 जापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

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 शुल्कया 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. Accord Chemical Corporation, A-405 & B-705, Western Edge II, BLD, CCI Comp B/h Metro Off Western E. Highway, Borivali East, Mumbai, 400066 (hereinafter referred to as "the importer") had filed Warehousing Bill of Entry No. 9561779 dated 06-01-2024 for import of 500MT of n-Butyl Acrylate (CTH:2916 1210) through their Custom Broker M/s Rudra Shipping Services, Gandhidham and filed subsequent Export Bills of Entry No. 9732667 dated 19-01-2024 (Quantity declared in BE:10MT; Quantity cleared 8.1MT) and 2262046, 2262048 & 2262541 all dated 23-02-2024 for clearance of 100MT each.

2. On perusal of documents uploaded by the importer in the e-sanchit portal while filing aforesaid Bill of Entry No. 9561779 dated 06-01-2024, it is observed that they had purchased this consignment of 500MT of n-Butyl Acrylate from M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra on high seas purchase basis vide their agreement dated 04-01-2024 (**RUD-1**). As per the Bill of Lading No. CRP95CHN03-B dated 19-12-2023, the shipper of the said goods was M/s Tricon Energy, Houston, Texas, USA and the notify party was M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra and the goods were shipped from Qinzhoush Port, China onboard vessel MT Chemroute Pegasus.
3. Further, Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) vide S.O. 2182(E) dated 29th June 2020 notified n-Butyl Acrylate (Quality Control) Order, 2020 (**RUD-2**) wherein Indian Standard IS 14709:1999 was prescribed as the compulsory standard and specification for n-Butyl Acrylate. The n-Butyl Acrylate (Quality Control) Order, 2020 came into force on 22nd December 2023, in light of n-Butyl Acrylate (Quality Control) Amendment Order, 2023 as notified by the Ministry of Chemical and Fertilizers (Department of Chemicals and Petrochemicals) vide S.O. 2729(E) dated 20th June 2023 (**RUD-3**). The n-Butyl Acrylate (Quality Control) Order, 2020 is an order issued under Section 15 of the Bureau of Indian Standards Act, 2016.
4. The relevant extract of Para 2.03 of the Foreign Trade Policy, 2023 reads as follows:-

2.03 Compliance of Imports with Domestic Laws

(a) Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.

In light of Para 2.03 of the Foreign Trade Policy, 2023 it is compulsory for all the imported goods to be compliant with the applicable domestic laws.

5. Further attention is drawn to Para 2(A) (Indian Quality Standards: (A) Mandatory Indian Standards of Bureau of Indian Standards (BIS)) of General Notes Regarding Import Policy which reads as follows:-

Quality of the products that are subject to mandatory Indian Standards, as applicable to domestic goods, shall be required to comply with quality specified for the product as per same Indian Standards. For compliance of this requirement, all manufacturers/exporters of these products to India shall be required to obtain BIS license for using Standards mark on their product.

...As and when BIS notifies the quality specifications for new product(s) as an Indian Standards, the said Indian Standard would be deemed to be part of Appendix – III from the date of implementation of the said Indian Standards for the said product(s) and the import of that product(s) shall conform to that specified Indian Standard from the date of implementation as specified for the said product(s) by BIS.

Therefore, it appears that n-Butyl Acrylate to be imported by any importer must comply with compulsory Indian Standard IS 14709:1999 as mandated by n-Butyl Acrylate (Quality Control) Order, 2020. Therefore, any such n-Butyl Acrylate imported which does not comply with the compulsory BIS norms i.e., Indian Standard IS 14709:1999 are prohibited for the purpose of import under Section 15 of the Bureau of Indian Standards Act, 2016.

Further, attention is drawn to Section 2(33) of the Customs Act, 1962 which reads as follows:-

2(33) "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;

Therefore, in view of the above, any consignment of n-Butyl Acrylate imported into the territory of India which does not comply with the compulsory Indian Standard IS 14709:1999 as mandated by n-Butyl Acrylate (Quality Control) Order, 2020 are "Prohibited Goods" in light of Section 2(33) of the Customs Act, 1962 read with Section 15 of the Bureau of Indian Standards Act, 2016.

6. Date of Reckoning of Import

The Bill of Lading No. CRP95CHN03-B dated 19-12-2023 was issued before the cut-off date of n-Butyl Acrylate (Quality Control) Order, 2020 coming into force i.e. 22.12.2023. The date of reckoning of Import is guided by Para 2.17 of Handbook of Procedures 2023 which reads as follows:-

2.17 Date of reckoning of Import / Export

(a) Date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port.

Para 11.11 of the Hand Book of Procedures:

Date of shipment/ dispatch for imports will be reckoned as under:-

| Sr. No. | Mode of Transportation | Date of Shipment/Dispatch |
|----------------|-------------------------------|--|
| 1 | By Sea | The date affixed on the Bill of Lading |

7. In this case, there was a change in the import policy of the subject goods viz. n-Butyl Acrylate from "free" to "Prohibited" and accordingly, the date of reckoning appears to be guided by Para 1.05(b) (Transitional Arrangements) of the Foreign Trade Policy-2023 which reads as follows:-

...The importability/ exportability of a particular item is governed by the policy as on the date of import/ export. The date of import/ export is defined in Para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively.

*...In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. **However, the import through High Sea sales will not be covered under this facility.***

8. In view of the above, as there was high seas sale/purchase between M/s Kamsons Polymers Pvt. Ltd and the importer on 04.01.2024 and the Indian Standard IS 14709:1999 as mandated by n-Butyl Acrylate (Quality Control) Order, 2020 was applicable to import of subject goods w.e.f. 22-12-2023, accordingly, n-Butyl Acrylate (Quality Control) Order, 2020 appears to be applicable on this consignment of goods. However, the importer did not submitted any documents related to the BIS compliance of the subject goods in the e-sanchit portal and accordingly, ex-bond Bills of Entry No. 2262046, 2262048 & 2262541 all dated 23-02-24 were put on hold for the purpose of examination by SIIB, Kandla. The examination/sampling of the imported goods was carried out under panchnama dated 15-03-2024 drawn at the premise of M/s Friends Oil and Chemicals Terminal Pvt. Ltd., KhariRohar Road, Near Booster Pump Station, Old Kandla and M/s Aegis Vopak Terminal Limited (Unit-1), Plot No. 3, Kandla Port Trust, 370210. During the course of examination, it was

observed that against the total quantity of 500MT declared in the warehousing Bill of Entry No.9561779 dated 06-01-2024, the total quantity received in the storage terminals was 497.949MT. Further, a quantity of 8.100MT was cleared vide ex-bond bill of entry No. 9732667 dated 19-01-2024 (BE quantity: 10MT). Accordingly, the available quantity of 489.398MT of n-Butyl Acrylate valued at 4,58,41,495/- (Rupees Four crore sixty eight lacs thirty four thousand five hundred and seventy five only) imported by M/s. Accord Chemical Corporation was placed under seizure under Section 110(1) of the Customs Act, 1962 vide seizure memo dated 15-03-2024(**RUD-4**).The sample drawn was submitted to CRCL, Kandla for testing, who vide its test report bearing Lab No. 12658-SIIB/18-03-2024 dated 27-03-2024 (**RUD-5**)reported as follows:-

Nature: The sample as received is in the form of clear colourless liquid.

Composition: It has the characteristics of n-Butyl Acrylate.

9. Subsequently, statement of Ms.Nidhi Shah,Logistics Head and Authorized representative of M/s Accord Chemical Corporation was recorded on 05.04.2024(**RUD-6**)wherein she inter-alia stated as follows:-

- *Their firm had signed High Seas Sale agreement dated 04.01.2024 with M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra for purchase of 500MT of n-Butyl Acrylate commonly known as Butyl Acrylate Monomer covered under Bill of Lading No. CRP95CHN03-B Dated 19-12-2023.*
- *As per the Bill of Lading No. CRP95CHN03-B dated 19-12-2023 the Shipper was M/s Tricon Energy, Houston, Texas, USA and the Notify party was M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra and the goods were shipped from Qinzhous Port, China onboard vessel MT Chemroute Pegasus.*
- *On enquiry from M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra, they got to know that the goods i.e., n-Butyl Acrylate imported by their firm vide Bill of Entry No. 9561779 dated 06-01-2024 were manufactured by M/s Guangxi Huayi New Material Company Limited, No.1, Haitun Road, Qinzhous Port Area, China (Guangxi), Pilot Free Trade Zone, China who does not hold BIS certification.*
- *Therefore, the goods viz. n-Butyl Acrylate imported by their firm vide Bill of Entry No. 9561779 dated 06-01-2024 were not compliant with the compulsory BIS norm of Indian Standard IS 14709:1999 as required in light of n-Butyl Acrylate (Quality Control) Order, 2020.*

- *Their firm was of the opinion that n-Butyl Acrylate (Quality Control) Order, 2020 notified by Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) vide S.O. 2182(E) dated 29th June 2020 shall be applicable from 22nd December 2023 and since the Bill of Lading No. CRP95CHN03-B vide which 500MT of n-Butyl Acrylate had been imported was issued on 19-12-2023;*
- *They were of the opinion that the date of reckoning of Import for Bill of Entry No. 9561779 dated 06-01-2024 will be 19-12-2023 in light of Para 2.17 "Date of reckoning of Import/ Export" of Handbook of Procedures 2023, and since it was before the cut-off date of 22-12-2023 from which n-Butyl Acrylate (Quality Control) Order, 2020 will be applicable, we were of the opinion that there was no need to comply with the n-Butyl Acrylate (Quality Control) Order, 2020 for this particular consignment.*
- *On going through Para 1.05 Transitional Arrangements of Foreign Trade Policy 2023, since they have purchased n-Butyl Acrylate vide high seas sale agreement dated 04-01-2024 from M/s Kamsons Polymers Pvt. Ltd., the date of reckoning in this case will be governed by Para 2.17 "Date of reckoning of Import/Export" of Handbook of Procedures 2023 read with Para 1.05 "Transitional Arrangements" of Foreign Trade Policy 2023.*
- *Accordingly, they accept and agree that this consignment of n-Butyl Acrylate imported by our firm vide Bill of Entry No. 9561779, dated 06-01-2024 was not compliant with the IS 14709:1999 as required under n-Butyl Acrylate (Quality Control) Order, 2020.*

10. Therefore, in her statement, Ms. Nidhi Shah, Logistics Head and Authorized representative of M/s. Accord Chemical Corporation agreed that the n-Butyl Acrylate that they had purchased from M/s Kamsons Polymers on high seas sale basis and imported vide Bill of Entry No. 9561779 dated 06-01-2024 were not compliant with the compulsory Indian Standard IS 14709:1999 as required in light of n-Butyl Acrylate (Quality Control) Order, 2020.

11. Further, statement of Shri Jemin D. Parikh, G-card holder and authorized signatory M/s. Rudra Shipping Services and Custom Broker of M/s. Accord Chemical Corporation was recorded on 10-04-2024 (RUD-7) under Section 108 of the Customs Act, 1962 wherein he, inter-alia stated that:-

- *Their firm had filed Bills of Entry No. 9561779 dated 06-01-2024, 9732667 dated 19-01-2024 and 2262046, 2262048*

&2262541 all dated 23-02-2024 on behalf of the importer M/s Accord Chemical Corporation.

- *M/s. Accord Chemical Corporation purchased n-Butyl Acrylate imported vide Bill of Entry No. 9561779 dated 06-01-2024 from M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra on High Seas basis vide the agreement dated 04-01-2024. As per the Bill of Lading No. CRP95CHN03-B dated 19-12-2023 the Shipper was M/s Tricon Energy, Houston, Texas, USA and the Notify party was M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra and the goods were shipped from Qinzhou Port, China onboard vessel MT Chemroute Pegasus.*
- *On enquiry from the importer M/s Accord Chemical Corporation they got to know that n-Butyl Acrylate imported vide Bill of Entry No. 9561779 dated 06-01-2024 was manufactured by M/s Guangxi Huayi New Material Company Limited, No.1, Haitun Road, Qinzhou Port Area, China (Guangxi), Pilot Free Trade Zone, China who did not hold BIS certification.*
- *On the basis of their enquiry with the importer firm M/s Accord Chemical Corporation n-Butyl Acrylate imported vide Bill of Entry No. 9561779 dated 06-01-2024 was not compliant with the compulsory BIS norm of Indian Standard IS 14709:1999 as required under n-Butyl Acrylate (Quality Control) Order, 20201.*
- *their firm was of the opinion that n-Butyl Acrylate (Quality Control) Order, 2020 notified by Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) vide S.O. 2182(E) dated 29th June 2020 shall be applicable from 22nd December 2023 as notified by Ministry of Chemicals and Fertilizer (Department of Chemical and Petrochemicals)vide S.O. 2729(E) dated 20th June 2023.*
- *since the Bill of Lading No. CRP95CHN03-B vide which 500MT of n-Butyl Acrylate had been imported was issued on 19-12-2023; they were of the opinion that the date of reckoning of Import for Bill of Entry No. 9561779 dated 06-01-2024 would be 19-12-2023 in light of Para 2.17 "Date of reckoning of Import/ Export" of Handbook of Procedures 2023, and since it was before the cut-off date of 22-12-2023 from which n-Butyl Acrylate (Quality Control) Order, 2020 would be applicable, they were of the opinion that there was no need to comply with the n-Butyl Acrylate (Quality Control) Order, 2020 for this particular consignment.*

- *On going through Para 1.05 Transitional Arrangements of Foreign Trade Policy 2023, he understood that in this case, since M/s Accord Chemical Corporation purchased n-Butyl Acrylate on high seas sale agreement vide their agreement with M/s Kamsons Polymer, Thane dated 04-01-2024 from M/s Kamsons Polymers Pvt. Ltd., the date of reckoning in this case would be governed by Para 2.17 "Date of reckoning of Import/Export" of Handbook of Procedures 2023 read with Para 1.05 "Transitional Arrangements" of Foreign Trade Policy 2023.*
- *He accepted and agreed that this consignment of n-Butyl Acrylate imported by M/s Accord Chemical Corporation vide Bill of Entry No. 9561779 dated 06-01-2024 was not compliant with the IS 14709:1999 and therefore, violated the provisions of n-Butyl Acrylate (Quality Control) Order, 2020.*

12. In view of the above, the goods imported by the importer vide Bill of Entry No. 9561779 dated 06-01-2024 do not comply with the compulsory Indian Standard IS 14709:1999 as required in light of n-Butyl Acrylate (Quality Control) Order, 2020 and are therefore, prohibited goods under Section 15 of the Bureau of India Standards Act, 2016 read with Section 2(33) of the Customs Act, 1962.

13. In view of the above, the Investigation report dated 25.06.2024 has proposed the following:-

- 13.1 500MT (including 10MT cleared vide ex-bond Bill of Entry No. 9732667 dated 19-01-2024) of n-Butyl Acrylate (CTH:2916 1210) imported by M/s. Accord Chemical Corporation vide warehousing Bill of Entry No. 9561779 dated 06-01-2024 valued at 4,68,34,575/- (Rupees Four crore sixty eight lacs thirty four thousand five hundred and seventy five only) are liable for confiscation under Section 111(d) of the Customs Act, 1962.
- 13.2 For the acts of omission and commission committed by the importer, they are liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

WAIVER OF SHOW CAUSE NOTICE:-

14. The importer has, vide letter dated 21.06.2024 has requested for waiver of a Show Cause Notice and agreed to pay all the dues in the matter.

15. In the instant matter, the issue pertains to Section 124 of the Customs Act. As per first proviso to Section 124 of the Customs Act, 1962 the show cause notice and personal hearing may be considered oral at the request of the person concerned. Therefore, in light of the said provision, waiver of Show cause notice is allowed.

DISCUSSION AND FINDINGS:-

16. I find that M/s. Accord Chemical Corporation (importer) had filed Warehousing Bill of Entry No. 9561779 dated 06-01-2024 for import of 500MT of n-Butyl Acrylate through their Custom Broker M/s.Rudra Shipping Services, Gandhidham and filed subsequent Ex-bond Bills of Entry No. 9732667 dated 19-01-2024 (Quantity declared in BE:10MT; Quantity cleared 8.1MT) and 2262046, 2262048 & 2262541 all dated 23-02-2024 for clearance of 100MT each.

17. I find that import of n-Butyl Acrylate must comply with compulsory Indian Standard IS 14709:1999 as mandated by n-Butyl Acrylate (Quality Control) Order, 2020. Ministry of Chemicals and Fertilizers (Department of Chemicals and Petrochemicals) vide S.O. 2182(E) dated 29th June 2020 notified n-Butyl Acrylate (Quality Control) Order, 2020 wherein Indian Standard IS 14709:1999 was prescribed as the compulsory standard and specification for n-Butyl Acrylate. **The n-Butyl Acrylate (Quality Control) Order, 2020 came into force on 22nd December 2023**, in light of n-Butyl Acrylate (Quality Control) Amendment Order, 2023 as notified by the Ministry of Chemical and Fertilizers (Department of Chemicals and Petrochemicals) vide S.O. 2729(E) dated 20th June 2023. Therefore, any such n-Butyl Acrylate imported which does not comply with the compulsory BIS norms i.e., Indian Standard IS 14709:1999 **are prohibited** for the purpose of import under Section 15 of the Bureau of Indian Standards Act,2016.

18. I find that the importer had purchased this consignment of 500MT of n-Butyl Acrylate from M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra on **high seas purchase basis vide their agreement dated 04-01-2024**. As per the Bill of Lading No. CRP95CHN03-B dated 19-12-2023, the shipper of the said goods was M/s Tricon Energy, Houston, Texas, USA and the notify party was M/s Kamsons Polymers Pvt. Ltd., Thane, Maharashtra and the goods were shipped from Qinzhou Port, China onboard vessel MT Chemroute Pegasus.

19. I find that the date of reckoning of import is the Bill of Lading as per Para 2.17 of Handbook of Procedures 2023 which reads as follows:-

2.17 Date of reckoning of Import / Export

(a) Date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country as given in Paragraph 11.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port.

Para 11.11 of the Hand Book of Procedures:

Date of shipment/dispatch for imports will be reckoned as under:-

| <i>Sr. No.</i> | <i>Mode of Transportation</i> | <i>Date of Shipment/Dispatch</i> |
|-----------------------|--------------------------------------|---|
| 1 | <i>By Sea</i> | <i>The date affixed on the Bill of Lading</i> |

20. In the instant case, the Bill of Lading No. CRP95CHN03-B dated 19-12-2023 was issued before the cut-off date of n-Butyl Acrylate (Quality Control) Order, 2020 coming into force i.e. 22.12.2023. As per para 1.05(b) of Foreign Trade Policy-2023, reproduced herein below, allows import already made before the date of such regulation/restriction. However, there is an exclusion clause, which states that such facility will not be allowed in case of High Sea Sales:-

“(b) Item wise Import/Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/ exportability of a particular item is governed by the policy as on the date of import/ export. The date of import/ export is defined in para 2.17 of HBP 2023. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However, the import through High Sea sales will not be covered under this facility.”

21. In view of the above, it is clear that the importer has imported n-Butyl Acrylate in contravention of the restriction/prohibition imposed by n-Butyl Acrylate (Quality Control) Order, 2020 read with Para 1.05(b) of FTP-2023.

22. I further find that Ms. Nidhi Shah, Logistics Head and Authorized representative of M/s. Accord Chemical Corporation in her statement has agreed that the n-Butyl Acrylate that they had purchased from M/s Kamsons Polymers on high seas sale basis and imported vide Bill of Entry No. 9561779 dated 06-01-2024 were not compliant with the compulsory Indian Standard IS 14709:1999 as required in light of n-Butyl Acrylate (Quality Control) Order, 2020.

23. In view of the above, I hold that the goods imported by them vide Bill of Entry No. 9561779 dated 06-01-2024 did not comply with the compulsory Indian Standard IS 14709:1999 as required in light of n-Butyl Acrylate (Quality Control) Order, 2020 and are therefore, prohibited goods under Section 15 of the Bureau of India Standards Act, 2016 read with Section 2(33) of the Customs Act, 1962.

24. In view of the above discussion and findings, I hold the goods liable for confiscation under Section 111(d) of the Customs Act, 1962. However, in terms of Section 125 of the Customs Act, 1962, prohibited goods can be released on payment of redemption fine.

25. I further find that their act of importing restricted/prohibited goods vide a High Sea Sales agreement, has rendered them liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

26. In view of the above, I hereby pass the following orders:-

(i) I order to confiscate 500MT (including 10MT cleared vide ex-bond Bill of Entry No. 9732667 dated 19-01-2024) of n-Butyl Acrylate (CTH:2916 1210)

imported by M/s. Accord Chemical Corporation vide warehousing Bill of Entry No. 9561779 dated 06-01-2024 valued at 4,68,34,575/- (Rupees Four crore sixty eight lacs thirty four thousand five hundred and seventy five only) under Section 111(d) of the Customs Act, 1962. However, I give them an option to pay redemption fine of Rs.11,00,000/- (Rupees Eleven Lakhs only).

(ii) I impose penalty of Rs.11,00,000/- (Rupees Eleven Lakhs only) under Section 112(a)(i) of the Customs Act, 1962.

27. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.


O/C
(Dev Prakash Bamanavat)

Additional Commissioner

F.No. GEN/ADJ/ADC/1162/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20240671ML000000DD66

To,

M/s. Accord Chemical Corporation, A-405 & B-705,
Western Edge II, BLD, CCI Comp B/h Metro Off Western E. Highway,
Borivali East, Mumbai, 400066

Copy to:-

1. The Assistant Commissioner Review/EDI/TRC/SIIB, Customs House, Kandla for necessary action.
2. Guard File.

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M/s. Rudra Shipping Services