



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/ICFS/MISC/241/2024-Docks Examn-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/30/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	03.05.2024
E	Noticee/Party/ Importer/ Exporter	M/s EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED, KHASRA NO. 6, VILLAGE UDAYRAMPUR, NANGLA, TEHSIL DHAULANA, HAPUR-245101,
F	DIN No.	DIN – 20240571MO0000111FE2

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),
 7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की 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 डूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED, KHASRA NO. 6, VILLAGE UDAYRAMPUR, NANGLA, TEHSIL DHAULANA, HAPUR-245101 (hereinafter referred to as "the importer") having IEC No. AAFCE6823P, filed **Bill of Entry No. 3011831 DT. 13/04/2024**, under Section 46 of the Customs Act, 1962, through their CHA M/s Oriental Trade Links for the clearance of goods i.e. **Used Rubber Tire Loose Scrape** under CTH 40040000 imported from M/s. LAKIN TIRE WEST, LLC, USA under DGFT LICENCE NO. 0111005657 dated DT:05.09.2022 (valid upto 05.03.2024).

2. The subject Bill of Entry No. 3011831 DT. 13/04/2024 has been facilitated under RMS. Six out of Ten Containers have been selected for scanning and reported as clean but during inspection, seal on the container was found mis-match. In order to ascertain and identify the nature of above-mentioned imported goods, the examination of the goods was carried out on 22.04.2024 by Docks officer at Mundra CFS, Mundra in the presence of authorized representative of importer/ Customs Broker. During physical examination of the goods, goods found as "Shredded Tyre Scrap", violating the parameters of DGFT authorization granted to the importer which is different for Used Rubber Tire Loose Scrape declared in Bill of Entry/Bill of Lading /Invoice.

3. The goods declared under the said Bill of Entry is "Used Rubber Tyre Loose Scrape" whereas on examination it was found as "Shredded Tyre Scrap". The importer has obtained import license for import of restricted goods as mentioned in the DGFT license number 0111005657 dated DT:05.09.2022 (valid upto 05.09.2024). The Details of items sought to be imported under the License for Restricted imports under CTH 40040000 are mentioned below:-

Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.

Crumb Rubber/granules having mesh size finer than 10 mesh to 15 mesh and devoid of iron / steel & Most of the fibres.

4. In view of above, the above referred DGFT licence no. 0111005657 dated DT:05.09.2022 (valid upto 05.09.2024) does not cover the import authorization for item /goods declared as "Used Rubber Tyre Loose Scrape". As the goods i.e. Used Rubber Tyre Loose Scrape are put in the restricted import category list and the importer has failed to produce required valid authorization from the Director General of Foreign Trade (DGFT).

In View of Above, the above mentioned imported goods are restricted under Para 2.31 of the Foreign Trade Policy (FTP) 2015-20 and the importer has failed to fulfil the conditions to import of restricted goods i.e Shredded Tyre Scrape."

5. In the context of this case, the following legal provisions are reproduced for reference. Relevant Legal Provisions:

Para 2.31(II) of Foreign Trade Policy, 2023 is reads as under :

Sl. No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
I. Second-Hand Capital Goods			
I(a)	i. Desktop Computers; ii. Refurbished / re-conditioned spares of re-	Restricted	Importable against Authorisation

	furnished parts of Personal Computers/ Laptops; iii. Air Conditioners; iv. Diesel generating sets		
I(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
I(c)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare
I(d)	All other second-hand capital goods {other than (a) (b) & (c) above}	Free	
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation
III	Second Hand Goods imported for the purpose of repair/refurbishing / reconditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

Section 46: Entry of goods on importation. – "(1) The importer of any goods, other than goods intended for transit or trans-shipment, shall make entry thereof by presenting electronically to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(4) The importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any,

relating to the imported goods.”

Section 111(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;

Section 112-Penalty for improper importation of goods, etc. – Any person -(a) - who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act,

6. From the forgoing facts and legal position, it appears that the Importer have imported Shredded Tyre scrap and as per 2.31 of Foreign Trade Policy 2015-20, wherein import of Second Hand Goods other than capital goods is restricted and require import authorization. As no import authorisation has been submitted by the Importer, the goods become prohibited and are liable for confiscation under Section 111(d) of the Customs Act, 1962.

7. In terms of Section 46(4) of Customs Act 1962, the Importer of any goods are required to declare correct details/particulars in Bill of Entry being filed by them. Further, in terms of Section 46(4A) of Customs Act 1962, the Importer who presents a Bill of Entry shall ensure -

- a. the accuracy and completeness of the information given therein.
- b. the authenticity and validity of any document supporting it.
- c. compliance with the restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.

8. In the instant case, the Importer had filed the Bill of Entry with incorrect particulars as discussed herein above. Therefore, the said goods are liable for confiscation under Section 111(d) of the Customs Act, 1962.

9. The Importer has imported goods i.e. “Shredded Tyre Scrap” other than “Used Rubber Tire Loose Scrape” without any import authorization and thus mis-declared the goods, therefore rendered themselves liable for penal action under the provisions of Section 112(a) of the Customs Act, 1962.

PERSONAL HEARING AND WRITTEN SUBMISSION

10. The importer vide letter dated 29.04.2024 submitted that while filling of bill of entry, wrong license No. 0111005657 dated DT:05.09.2022 (valid upto 05.03.2024) was mistakenly uploaded by the C.B Documentation Person. Whereas the correct license details is (Lic no. 0111012387 Date 05.12.2023 (valid upto 03.04.2025), description of the goods permitted for import under this license which fall under classification CTH 40040000 is mentioned below:-

Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.

Used Rubber Tyres Scrap/Tubes (Multiple Cuts/Shredded/pressed Balled/ Basel No. B3080 & B3140).

Furthermore, the importer vide letter-dated dated 29.04.2024 have stated that they will not proceed further for Show Cause Notice and Personal

Hearing in the matter and have requested to decide their matter on merits of the case and grant them permission to clear the said Cargo under correct license (Lic no 0111012387 Date 05.12.2023 (valid upto 03.04.2025).

DISCUSSION AND FINDINGS

11. I have carefully gone through the case as well as available of records of the case. The importer vide letter dated 29.04.2024 has requested to waive the SCN and personal hearing in this matter. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. The following main issues are involved in this case, which are required to be decided:

- i. Whether the impugned goods require import authorization as per para 2.31 of the Foreign Trade Policy, wherein, all second hand/used goods, other than capital goods are restricted;
- ii. Whether the impugned goods are liable for confiscation under Section 111(d) of the Customs Act, 1962;
- iii. Whether the importer is liable for penalty under Section 112(a) of the Customs Act, 1962.
- iv. Whether the license 0111012387 Date 05.12.2023 (valid upto 03.04.2025) issued by DGFT to M/s. EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED can be permitted.

12. I find that M/s. EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED, having IEC No. ABGCS8536B, filed Bill of Entry No. 3011831 DT. 13/04/2024, under Section 46 of the Customs Act, 1962, through their CHA M/s Oriental Trade Links for the clearance of goods i.e. Used Rubber Tire Loose Scrape under CTH 40040000 imported from M/s. LAKIN TIRE WEST, LLC, USA under DGFT LICENCE NO. 0111005657 dated 05.09.2022 (valid upto 05.03.2024).

13. I find that the subject Bill of Entry No. 3011831 DT. 13/04/2024 has been facilitated under RMS. Six out of Ten Containers have been selected for scanning and reported as clean but during inspection, Seal on container was found mis-match. In order to ascertain and identify the nature of above-mentioned imported goods, the examination of the goods was carried out on 22.04.2024 by Docks officer at Mundra CFS, Mundra in the presence of authorized representative of importer/ Customs Broker. During physical examination of the goods, goods found as "Shredded Tyre Scrap", violating the parameters of DGFT authorization granted to the importer which is different from Used Rubber Tyre Loose Scrape declared in Bill of Entry/Bill of Lading /Invoice.

14. I find that the goods imported under the said Bill of Entry is "Used Rubber Tyre Loose Scrape" whereas on examination it was found as "Shredded Tyre Scrap". The importer has obtained import license for import of restricted goods as mentioned in the DGFT license number 0111005657 dated 05.09.2022 (valid upto 05.03.2024). The Details of items sought to be imported under the License for Restricted imports under CTH 40040000 are mentioned below:-

Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.

Crumb Rubber/granules having mesh size finer than 10 mesh to 15 mesh

and devoid of iron / steel & Most of the fibres.

15. In view of above, I find that referred DGFT license no. 0111005657 dated 05.09.2022 (valid upto 05.03.2024). does not cover the import authorization for item /goods declared as "Shredded Tyre Scrap". As the used Tyre scrap are put in the restricted import category list and the importer has failed to produce required valid Authorization permission from the Director General of Foreign Trade (DGFT).

16. I find that the above mentioned imported goods are restricted under Para 2.31 of the Foreign Trade Policy (FTP) 2015-20, wherein, all Second Hand / Used Goods, other than capital goods are restricted and requires an Authorization for import. However, the importer has not produced any authorization issued by DGFT for importation of the goods i.e Shredded Tyre Scrap.

17. I find that the goods imported under Bill of Entry No. 3011831 Dt. 13.04.2024 had been mis-declared in material particular in as much as the said Bill of Entry had been filed on the basis of wrong description.

18. In light of these facts of mis-declaration of value, I find that the subject import goods i.e. " Shredded Tyre Scrap ", are liable for confiscation as per the provisions of Section 111(d) of Customs Act, 1962 which I hold accordingly.

19. As the impugned goods are found to be liable for confiscation under Section 111(d) of the Customs Act, 1962, I find that it necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation or otherwise.

The Section 125 ibid reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1/or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.”

19(i). 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 adjudging the case which has to be exercised in view of facts and circumstances of the case.

19(ii). Therefore, considering the facts of the case I find it appropriate to grant an option to pay redemption fine under Section 125(1) of the Customs Act, 1962, in lieu of confiscation of the subject goods as the goods fall under restricted category as per the Sr. No. II of Para 2.31 of the Foreign Trade Policy (FTP) 2015-20, (wherein, all Second Hand / Used Goods, other than capital goods are restricted and requires an Authorization for import) and the importers have not produced any authorization issued by DGFT for importation of the goods. However, I also find that importer, M/s. EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED has been issued/already in possession of License No. 0111012387 Date 05.12.2023 (valid upto 03.04.2025) issued by

DGFT which authorizes them to import Tyre scrap in shredded form. Therefore I allow them to modify the License No.0111005657 DT:05.09.2022) (valid upto 05.03.2024) declared in the above said Bill of Entry No. 3011831 Dt. 13.04.2024 on the condition of fulfilment of Redemption Fine & Penalty imposed on the importer.

21. I find that the importer has contravened the provisions of the Policy as they filed Bill of entry with wrong License details and with wrong description of the goods thereby attempted to misdeclare the goods. As I have already held that goods are liable for confiscation, the importer needs to be visited with penalty under section 112(a) Customs Act, 1962 which I confirm accordingly.

22. In view of the above discussion and findings, I pass the following order:

ORDER

- i. I reject the declaration of the goods i.e. "Used Rubber Tire Loose Scrape" imported vide Bill of Entry No. 3011831 dt. 13.04.2024 filed by M/s. EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED and re-determine it as "Shredded Tyres Scrap" having assessable value of Rs. 15,08,366 /- classified the impugned goods under ITC HS Code 40040000.
- ii. I order for confiscation of goods namely "Used Rubber Tire Loose Scrape" having re-determined as "Shredded Tyre Scrap" under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to redeem the same on payment of redemption fine of Rs. 1,70,000/- (Rs. One Lac seventy Thousand Only) under section of 125 of the Custom Act 1962.
- iii. I impose a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on M/s. EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED (IEC AAFCE6823P), under Section 112(a)(i) of the Customs Act, 1962 for the reasons mentioned above.

23. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Signed by
Arun Kumar (Arun Kumar)
Additional Commissioner, Customs
Date: 03-05-2024
C18t15.06

To,

1. **EARTHSTAR RUBBER INDUSTRIES PRIVATE LIMITED,**
KHASRA NO. 6, VILLAGE UDAYRAMPUR, NANGLA,
TEHSIL DHAULANA, HAPUR-245101,

Copy to:

2. The Dy. Commissioner of Customs, RRA, Mundra Customs.

3. The Dy. Commissioner of Customs, TRC, Mundra Customs.
4. CHA M/s. Oriental Trade Links
5. Office Copy.

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