



OFFICE OF THE COMMISSIONER OF CUSTOMS
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE,
KANDLA-370210 (GUJARAT)
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|---|------------------------|---|
| A | File No.: | S/15-01/Gr-I/Parth Rasayan/18-19 |
| B | Order-in-Original No.: | KDL/ADC/PMR/14/2018-19 |
| C | Passed by: | Shri P.M.Rao, Addl. Commissioner of Customs, Kandla |
| D | Date of order: | 19.09.2018 |
| E | Date of issue: | 19.09.2018 |
| F | Importer: | M/s. Parth Rasayan Pvt.Ltd. |

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), having office at 7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad - 380009 in terms of Section 128 of the Customs Act, 1962. It should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
8. Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
9. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

Sub.: Import of "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", by M/s. Parth Rasayan Pvt.Ltd. 114, A.K.V.N Industrial Area, Meghnagar, Dt.Jhaba, Madhya Pradesh. through the CHA Cargo Clearing Agency, Gandhidham, Kutch-370201, Gujarat, filed B/E No. 7586764 dated 10.08.2018.

BRIEF FACTS OF THE CASE

The importer, M/s. Parth Rasayan Pvt.Ltd. 114, A.K.V.N Industrial Area, Meghnagar, Dt.Jhaba, Madhya Pradesh filed B/E No. 7586764 dated 10.08.2018 for clearance of 449.980 NMT (452.480 GMT) "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", classified under CTH No. 27101990, imported from UAE, valued at Rs.2,08,92,117.05 (Assessable Value). The said goods were given first check with the order to draw sample and forward the same to CRCL, Kandla for testing

2. The Test Report No. 1033012 dated 10/08/2018 issued on 27/08/2018 read as below:

"The sample as received is in the form of yellow colour liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

| | |
|--|--------------------|
| Flash Poi | :70 Degree Celsius |
| Ash Content | : Nil |
| Water | : Nil |
| Kinematic Viscosity at 40 Degree Celsius | : 2.73 cst |
| Density at 15 Degree Celsius | : 0.8330 gm/ml |
| Initial Boiling Point | 174Degree Celsius |
| Final Boiling Point | 38 Degree Celsius |

On the basis of above reported parameter, it is Diesel Oil."

3. It is evident from the Test Report that the product is Diesel Oil falling under tariff heading 27101930 against the description of "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", classified under CTH No. 27101990 as declared by the Importer.

4. The goods falling under tariff heading 27101930 are restricted and allowed to be imported through State Trading Enterprises (STE) only as per Policy condition -5 of the Chapter -27 of ITC (HS), Schedule-1.

The policy condition-5 of the Chapter 27 is reproduced below:-

"5.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&NG's Resolution No. P-23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date".

5. The importer in this case is neither an STE nor has submitted any documents showing grant of such rights by the DGFT to import or export any of the goods notified for exclusive trading through STEs.

6. It is further noticed that the declared description of the goods in the bill of entry is "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", classified under CTH No. 27101990, whereas the goods on being tested, vide test report as mentioned in the preceding para-2, are found to be 'Diesel Oil' which falls under Tariff heading 27101930 are restricted for importation and clearance thereof.

7. In view of the above discussion, it is found that the impugned goods valued at Rs.2,08,92,117.05 are more appropriately classifiable under Tariff heading 27101930 imported against the provisions of FTP are "illegal import" under the provisions of Section 11 of the Customs Act, 1962 and hence are held liable for confiscation under Section 111 (d) & (m) of the act *ibid.* The importer for such acts of commission/omission is also liable for penal action under Section 112 of the Customs Act, 1962.

8. The Importer vide their letter dated 28/08/2018 has submitted that they have entered a contract with M/s. Universal Fossil Fuel FZE, UAE, for supply of Petroleum Hydrocarbon Solvent @ USD 670/- PMT C&F. The captioned goods are supplied by them against the said contract.

9. They are actual users of the cargo and having their registered Unit at AKVN Industrial Area, Megh Nagar, Dist. Jhabua, M.P. The Petroleum Hydrocarbon Solvents imported is to be processed in their unit for making different types of Solvents, which in turn is the raw material of Paint and Ink Industry. The captioned goods are imported by them for the said purpose only. But the subject goods are not as per their contract and it is a mistake of wrong shipment. They have been importing since last 2 years and have not done any offences in the past.

10. Importer has further submitted that since the goods arrived is not as per their contract with Suppliers, and the same has no usage in their unit, they would like to return the goods to the Suppliers. Importer has stated that they have discussed with the Suppliers who have agreed to take the goods back.

DISCUSSION & FINDINGS

11. I have carefully gone through the case records. The party has requested for waiver of Show Cause Notice vide their letter dated 28.08.2018. I find that the goods imported and declared as "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", classified under CTH No. 27101990, but on testing they found to be diesel oil classifiable under CTH 27101930 attracting BCD @2.5%+SWS+Rs.16.69 per Ltr which is a restricted item and import and clearance of the same is subject to fulfilment of certain conditions.

12. The Test Report No. 1033012 dated 10/08/2018 issued on 27/08/2018 read as below:

"The sample as received is in the form of yellow colour liquid. It is composed of mixture of mineral hydrocarbons, having following constants:

| | |
|---|-----------------------------|
| <i>Flash Point</i> | <i>: 70 Degree Celsius</i> |
| <i>Ash Content</i> | <i>: Nil</i> |
| <i>Water</i> | <i>Nil</i> |
| <i>Kinematic Viscosity at 40 Degree Celsius</i> | <i>: 2.73 cst</i> |
| <i>Density at 15 Degree Celsius</i> | <i>: 0.8330 gm/ml</i> |
| <i>Initial Boiling Point</i> | <i>: 174 Degree Celsius</i> |
| <i>Final Boiling Point</i> | <i>: 380 Degree Celsius</i> |

On the basis of above reported parameter, it is Diesel Oil."

13. On verification of the above test report, I find that the product imported is having characteristics of Diesel Oil and accordingly falls under tariff heading 27101930.

14. All the goods falling under tariff heading 27101930 are not freely importable but restricted for imports to be made by the State Trading Enterprises (STE) only as per the policy condition -5 of the Chapter 27 of the ITC (HS) code, reproduced herein below;-

"5.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&NG's Resolution No. P-23015/1/2001-MKT. Dated 8.3.2002 including HPCL, BPCL & IBP who have been marketing transportation fuels before this date".

Further Para 2.20 of FTP 2015-20 may be read as under-

2.20 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 Enterprises (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 authorization to any other person to import or export any of the goods notified for exclusive trading through STEs.

15. The policy provisions mentioned in the Indian Trade Classification (Harmonised System) of Import in the Schedule-1 is binding as per the FTP 2015-20, Chapter-2 and Paragraph 2.02 thereto.

16. In view of the above discussion, I find that M/s. Parth Rasayan Pvt. Ltd has tried to import "Diesel Oil" by mis-declaring the same as "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", classified under CTH No.27101990 . The importer has also mis-classified the item under CTH - 27101990 instead of CTH-27101930. By doing so the importer has violated the provisions of FTP and Customs Act and made the goods liable for confiscation under Section 111 (d) and 111 (m) of the Customs Act, 1962 as the importer is neither an STE nor have submitted any authorization as provided in the Policy condition-5 of Chapter 27 of ITC (HS), Schedule-1. Further the declared description of the goods also have been found to be suppressed and mis-declared, hence the Importer is also liable for penal action under Section 112(a) of the act *ibid*.

17. In view of the above facts, I pass the following order.

ORDER

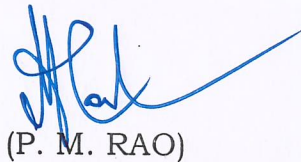
18. I reject the declared classification of imported goods "PETROLEUM HYDROCARBON SOLVENT (PACKED IN FLEXI BAGS)", which was declared classifying under CTH r/w ITC (HS) Schedule -1's heading 27101990 and order the same to be classified under CTH-27101930 in view of Test Report No. 1033012 dated 10/08/2018.

19. I order for confiscation of imported goods i.e Diesel oil valued at Rs. 2,08,92,117.05 covered under B/E No. 7586764 dated 10.08.2018 under Section 111 (d) & (m) of the Custom Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 7,00,000/- (Rs.Seven Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

20. I also impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) on the importer M/s.Parth Rasayan Pvt.Ltd under Section 112(a) of Customs Act, 1962.

21. I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

22. This order is passed without prejudice to the 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.



(P. M. RAO)

Addl. Commissioner of Customs
Custom House, Kandla.

F.No. S/15-01/Gr-I/Parth Rasayan/18-19

Dt. 19.09.2018

To,
M/s.Parth Rasayan Pvt.Ltd.
114, A.K.V.N Industrial Area,
Meghnagar, Dt.Jhaba, Madhya Pradesh

Copy to:

1. The Deputy Commissioner (RRA), Custom House ~~Mundra~~ *Kandla*
2. The Deputy Commissioner (Recovery), Custom House ~~Mundra~~ *Kandla*
3. Guard file.