



**सीमा शुल्क आयुक्त का कार्यालय,  
नवीन सीमा शुल्क भवन, नया कांडला ।**

**OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)  
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	फाइल संख्या/ File No.	S/10-65/ADJ/ADC/JF/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/32/2018-19
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	28.12.2018
E	जारी करने की दिनांक/Date of issue	28.12.2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	S/20-100/DP/2018-19 Dated 12/02/2014
G	नोटीसी/ पार्टी Noticee/Party	M/s. Jindal Fibres, Plot No. 49 & 58, Sector-II, Kandla Special Economic Zone (KASEZ), Gandhidham

1. यह अपील आदेश संबन्धित को नि शुल्क 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 (1) के अंतर्गत प्रपत्र सीए- 3 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 (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**“सीमा शुल्क आयुक्त (अपील), कांडला  
वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़  
अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA  
7<sup>th</sup> 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 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 2/- 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 2/- 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. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ 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 नियम (अपील), और सीमा शुल्क अधिनियम 1982, 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, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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 :**

1. M/s Jindal Fibres, Plot No. 49 & 58, Sector -II, Kandla Special Economic Zone (KASEZ), Gandhidham (*hereinafter referred to as the said unit*) have imported 23960 Kgs "Old and used hosiery rags" valued Rs. 4,47,094/- ( @0.30 US\$ per kgs- exchange rate Rs. 62.20 US\$) vide Bill of Lading No. CA1311818 per MV DUBAI EXPRESS on 21.04.2011. The cargo remained unclaimed for a long period of time.

1.1 Since the cargo remained unclaimed for a very long period, the custodian viz. M/s CONCOR CFS, Khari Road, Maccchunagar, Gandhidham-Kutchh, Gujarat-370201 had issued auction notice to the importer for clearance of the goods in terms of Section 48 of Customs Act, 1962. During scrutiny of the documents, it was noticed that the consignment of old and used hosiery rags falls under the category of restricted goods. As per para 2.17 of the Foreign Trade Policy 2009-14, "All second hand goods except second hand capital goods, shall be restricted for imports and may be imported only in accordance with provisions of FTP, ITC(HS), HBP VI, Public Notice or an authorization issued in this regard".

1.2 M/s Jindal Fibres, have imported old and used hosiery rags without having pre-requisite licence or authorization as prescribed under the Foreign Trade Policy 2009-14. Thus, the consignment of old and used hosiery rags was imported into India in violation of the provisions of Foreign Trade Policy 2009-14 and are liable for confiscation. M/s Jindal Fibres, have imported old and used hosiery rags and not cleared the goods for home consumption or warehoused or transhipped within thirty days from the date of unloading thereof at a Custom station or within such further time as the proper officer may allow without having the pre-requisite licence or authorization as prescribed under the Foreign Trade Policy 2009-14. Further, they have also not relinquished their title as prescribed under the provisions of Section 23(2) of Customs Act, 1962. Thus, the consignment of old and used hosiery rags was imported into India in violation of the provisions of Foreign Trade Policy 2009-14 and are liable for confiscation.

The provisions of Section 23(2) of Customs Act, 1962 is as under:

"The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of the goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon."

**" Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force."**

1.3 As per the above provisions, the importer cannot relinquish the said imported goods. M/s Jindal Fibres, have contravened the provisions of the Foreign Trade Policy 2009-14 and have thus rendered themselves liable for imposition of Penalty under the Customs Act, 1962.

1.5 Accordingly, a Show Cause Notice No. S/20-100/DP/2013-14 dated 12/02/2014 was issued to M/s Jindal Fibres, Plot No. 49 & 58, Sector – II, Kandla Special Economic Zone, Gandhidham by the Additional Commissioner of Customs(DP), Custom House, Kandla asking them as to why:-

- (i) The consignment of old and used hosiery rags totally valued at Rs. 4,47,094/- (Rs. Four Lakh Forty Seven Thousand Ninety Four only) should not be confiscated under Section 111(d) of the Customs Act, 1962.
- (ii) Penalty should not be imposed upon them under Section 112 of the Customs Act, 1962.

### **PERSONAL HEARING AND DEFENCE REPLY**

2. For the sake of natural justice, personal hearing was given to the noticee on 05.12.2018. Shri R.G. Chellani, Representative of the noticee appeared for personal hearing in the matter and stated that they have already given a written submission vide letter dated 03.06.2015 and submitted additional written submission vide letter dated 05.12.2018. Further, he stated that he has nothing more to add.

2.1 The noticee under submission made on 03.06.2015, at the outset denied all the allegations levelled in the impugned SCN and stated that they had not committed any acts or omissions and had not aided or abetted in omission or commission of any acts which had rendered the goods liable to confiscation under Section 111(d) of the Customs Act, 1962 and thus no penalty is imposable upon them under Section 112 of the Customs Act, 1962. They further, submitted that they have not imported the goods covered under Bill of Lading No. CA1311818 dated 21.04.2011 and they have not placed the order for the same and/or have not filed any Bill of Entry and/ or have not received any documents pertaining to the goods from the supplier and thus they are neither the importer nor the beneficiary owner of the alleged imported goods and hence penalty under Section 112(a) of the Customs Act, 1962 cannot be imposed upon them. Further, they also stated that they are not claiming the alleged goods and they have no objection if the said goods are put to Auction and sale proceeds are deposited in the Government Treasury. M/s. Jindal Fibres, KASEZ, Gandhidham further submitted that they are having a unit in Kandla Special Economic Zone, Gandhidham and are holding a valid LOA No. KASEZ/IA/1890/2002-03/8958 dated 14.02.2005 issued by the Development Commissioner, KASEZ, which renewed from time to time and was lastly renewed vide letter No. KASEZ/IA/1890/2002-03/9597 dated 18.12.2013 valid upto 30.11.2018. Vide said LOA they have been permitted to import "old and used clothing" for authorised operation and manufacture of finished goods and thus it is wrongly alleged that there is violation of para 2.17 of the Foreign Trade Policy 2009-14.

2.2 Further, vide letter dated 05.12.2018, the said unit submitted that they have not placed the order for the goods imported under the Bill of Lading No. CA1311818 dated 21.04.2011. They further submitted that they have not made any remittance for these goods; that they have not filed any Bill of Entry for the impugned goods and they are not claiming the goods. They submitted that they should

not be considered as an **“importer”** as per the definition given in the Section 2(26) of the Customs Act, 1962.

2.3 In view of above, they prayed to withdraw the said SCN issued against them and prayed that the details of the sale proceeds should be brought on record and amount if any recoverable under the provisions of the Customs Act, 1962 should be appropriated from the sale proceeds and they had no objection for the same.

### **DISCUSSIONS AND FINDINGS**

3. I have carefully gone through the entire case records, written as well as oral submissions made by the noticee and their authorized representative. The issues needs to be examined/decided in the instant case are as under:

- (i) whether the consignment of old and used hosiery rags totally valued at Rs. 4,47,094/- (Rs. Four Lakh Forty Seven Thousand Ninety Four only) can be confiscated under Section 111(d) of the Customs Act, 1962.
- (ii) whether penalty can be imposed upon M/s. Jindal Fibres, KASEZ under Section 112 of the Customs Act, 1962.

3.1 I find that M/s Jindal Fibres, Plot No. 49 & 58, Sector –II, Kandla Special Economic Zone (KASEZ), Gandhidham have imported consignment of 23960 Kgs of “mixed old and used hosiery rags” valued Rs.4,47,094/- (@0.30 US\$ per kgs- exchange rate Rs. 62.20 US\$) vide Bill of Lading No. CA1311818 dated 21.04.2011. The cargo remained unclaimed for a long period of time lying at M/s. CONCOR CFS, Gandhidham. Thus, in terms of Section 48 of Customs Act, 1962, M/s. CONCOR CFS, being a custodian, had issued auction notice to the importer for clearance of the goods. However, during scrutiny of the documents, it was noticed that the consignment of old and used hosiery rags falls under the category of restricted goods. As per para 2.17 of the Foreign Trade Policy 2009-14, “All second hand goods except second hand capital goods, shall be restricted for imports and may be imported only in accordance with provisions of FTP, ITC(HS), HBP VI, Public Notice or an authorization issued in this regard”. Thus, the present SCN alleging that the consignment of old and used hosiery rags imported into India was in violation of the provisions of Foreign Trade Policy 2009-14 and should be held liable for confiscation/ penalty.

3.2 In this regard, I find that the said unit is a holder of valid LOA No. KASEZ/IA/1890/2002-03/8958 dated 14.02.2005 issued by the Development Commissioner, KASEZ, which renewed from time to time and was lastly renewed vide letter No. KASEZ/IA/1890/2002-03/9597 dated 18.12.2013 valid up to 30.11.2018. I find that vide above mentioned LOA, the said unit have been permitted to import “old and used clothing” for authorised operation and manufacture of finished goods. Thus, I am of the view that there is no violation of para 2.17 of the Foreign Trade Policy 2009-14.

3.3 Further, it was alleged that the said unit has not cleared the goods for home consumption or warehoused or transshipment within 30 days from the date of unloading thereof. They have also not relinquished the title of the goods at that time. As per the provisions of Section 23(2) of Customs Act,

1962 the importer i.e. M/s. Jindal Fibres at this juncture cannot relinquish the said imported goods which are found to be liable for confiscation and thus have rendered themselves liable for penal action under the Customs Act, 1962.

The provisions of Section 23(2) of Customs Act, 1962 read as under:

“The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of the goods in a warehouse under section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.”

**“ Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.”**

3.4 As discussed in above paras, I find that there is no more disputes with regard to violation of para 2.17 of the Foreign Trade Policy 2009-14, as the said unit is having valid Letter of Approval issued by the Development Commissioner, KASEZ permitting importation of restricted goods under question. Thus, as the goods are not in contravention or in violation of para 2.17 of the Foreign Trade Policy 2009-14, importer can relinquish their title at any time. Therefore, I find that M/s. Jindal Fibres, KASEZ at no cost can relinquish their title of the goods.

3.5 Further, the said unit has contended that they have not filed any Bill of Entry for claiming the goods covered under Bill of Lading No. CA1311818 dated 21.04.2011 and as per definition 2(26) of the Customs Act, 1962, they cannot be considered as “importer”. In this regard, I totally differ with the contention of the said unit. Definition of “importer” under Section 2(26) of the Customs Act, 1962 is as under :-

*“2(26) “importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes (any owner, beneficial owner) or any person holding himself out to be the importer;”*

I find that the goods were imported into India in the name of M/s. Jindal Fibres under Bill of Lading No. CA1311818 dated 21.04.2011. Also the said unit has not relinquished the title of the goods till the issuance of present Show Cause Notice. Thus, M/s. Jindal Fibres, KASEZ, Gandhidham cannot deny the ownership of the goods and I find that they are the legal importer of the said goods. However, as discussed in para supra, I find that though said unit is the importer of the goods, they may relinquish their title on the goods at any time before an order for clearance of goods for home consumption under section 47 or an order for permitting the deposit of the goods in a warehouse under section 60 has been made.

3.6 Further, I find that the goods “old and used hosiery rags” are lying unclaimed at M/s. CONCOR CFS, Gandhidham. M/s. Jindal Fibres, KASEZ, has also submitted that they are not claiming the

consignment of "old and used hosiery rags" of 23960 Kgs. Further they have submitted that they have no objection if the goods are being auctioned and amount if any recoverable under the provisions of the Customs Act, 1962 being appropriated from the sale proceeds.


3.7 In view of above, I find that the said goods under question may be put on auction by the custodian M/s. CONCOR, CFS, Gandhidham as per provisions laid down under Section 48 of the Customs Act, 1962 and amount if any recoverable may be appropriated from the sale proceeds and deposited into Government exchequer.

4. In view of above discussion and findings, I pass the following order;

### ORDER

1. I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962 as the goods are lying unclaimed and are to be auctioned as per the provisions of the Customs Act, 1962.
2. I refrain from imposing any penalty under Section 112 of Customs Act, 1962, on M/s Jindal Fibres, KASEZ, Gandhidham .

5. This order is passed 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.

  
(AJAY KUMAR)  
ADDITIONAL COMMISSIONER  
CUSTOM HOUSE - KANDLA

Date : 28.12.2018

F. No. S/10-65/Adj/ADC/JF/2018-19

To

M/s. Jindal Fibres,  
Plot No. 49 & 58, Sector-II,  
Kandla Special Economic Zone (KASEZ),  
Gandhidham.

Copy to:

1. The Development Commissioner, KASEZ, Gandhidham.
2. The Deputy/Assistant Commissioner (RRA), Customs House, Kandla.
3. The Deputy/Assistant Commissioner (DP), Custom House, Kandla.
4. The Deputy/Assistant Commissioner (Disposal), Custom House, Kandla.
5. M/s. CONCOR CFS, Khari Rohar, Macchunagar, Gandhidham.
6. Guard file.