



**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/10-217/ADJ/ADC/KESARI/2016-17
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/03/2017-18
C	पारित कर्ता/ Passed by	SH. PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	15/05/2017
E	जारी करने की दिनांक/Date of issue	15/05/2017
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	S/10-16/2013-14 Gr.I dated 04/12/2014(Denovo)
G	नोटीसी/ पार्टी Noticee/Party	M/s. Kesri Oil Pvt Ltd, 13/4 Mathura Road, Plot No. 6, Sector-27-C, Faridabad-121 003 (Haryana).

1. यह अपील 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 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

7 वीं मंजिल, 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 जापान के साथ इयूटि/ 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, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Appellate Authority 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.

**Sub:- Denovo Proceeding in respect of O-I-A No. KDL-CUSTM-000-APP-037-15-16 dated 04.08.2015 arising out of O-I-O No. KDL/JC/RMG/10/14-15 dated 26.03.2015 in respect of Show Cause Notice F. No. S/10-16/2013-14 Gr.I dated 04.12.2014 issued to M/s Kesari Oil Pvt. Ltd., Faridabad (Haryana) & Ors.**

**BRIEF FACTS OF THE CASE:**

M/s. Kesri Oil Pvt Ltd, 13 / 4 Mathura Road, Faridabad, Haryana (*hereinafter referred to as "the importer"*) through their Customs Broker M/s. Rishi Kiran Road Lines, Gandhidham (*hereinafter referred to as "the CB"*) had filed three Bills of Entry for home consumption bearing No. 3136380, 3136733 & 3136901 all dated 30.08.2013, for clearance of total 212.6 MTs of Calcium Base Grease packed in 1200 Drums. The goods have been supplied by M/s Remel International F.Z.E, Saif Zone Sharzah, U A E at a unit price of US \$ 3661 PMT CFR Mundra vide invoice nos CI-9213-RI-126/123/127 all dt 12.08.2013. The classification of the goods were sought under CTH 34039900 with duty being leviable @ 7.5% (BCD) + 12% (CVD) + 2% + 1% + 4%. Particulars of these *Bills of Entry* are as under.

S. No.	Bill of Entry No and date	Assessable Value (in Rs.)	Quantity (in MTs)	Total duty (in Rs.)
1.	3136380/30.08.2013	17,71,669.00	71.00	458020.00
2.	3136733/30.08.2013	17,58,526.00	70.58	454623.00
3.	3136901/30.08.2013	17,69,519.00	71.02	457464.00
<b>TOTAL</b>		<b>52,99,714.00</b>	<b>212.60</b>	<b>13,70,107.00</b>

2. The goods landed at M/s. A V Joshi & Co. CFS, Gandhidham and were examined under first check examination procedure. The representative samples were drawn and forwarded to Central Revenue Control Laboratory, New Delhi for confirmation of description and to verify whether the goods under reference are hazardous in nature.

3. The Central Revenue Control Laboratory, New Delhi vide test report bearing file no. 35-Cus IC-01/2014-15 dtd.19.09.2014 submitted its report wherein they have informed that each sample falls under the category of hazardous waste in view of the following:-

A Each of item is emulsion of Petroleum (Mineral Hydrocarbons) Oil and Soap, Petroleum emulsions are listed at s.no. 4.1 of Schedule-I of Hazardous Waste (Management, Handling, Trans boundary and Movement), Rules, 2008 (HWMR, 2008).

B. Each of them is containing waste constituents (PAHs) as listed under 'List of Waste Constituents WHh Concentration Limit' from (A-12 to A-15), Class 'A' of Schedule-II of Hazardous Waste (Management, Handling, Trans boundary and Movement) , Rules, 2008 and their concentration is more than specified limit .

C. Products of such nature are also covered under part a (Basel No. A 4140), schedule (iii) of Hazardous Waste (Management, Handling, Trans boundary and Movement), Rules, 2008.

4. The import of Calcium Base Grease, which has been certified as Hazardous Waste, is governed by the Hazardous Waste (Management, Handling, Trans boundary and Movement) , Rules, 2008. (*hereinafter referred to as the said rules*).

Hazardous Waste has been defined under Rule 3(I) of the Hazardous Waste (Management, Handling and Trans boundary Movement) Rules, 2008 as under:-

(I) "Hazardous Waste" means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other waste or substances, and shall include:-

- (i) waste specified under column (3) of schedule -I
- (ii) wastes having constituents specified in Schedule-II if their concentration is equal to or more than the limit indicated in the said Schedule, and
- (iii) wastes specified in Part -A or Part-B of the Schedule -III in respect of import or export of such wastes in accordance with rules 12,13 and 14 or the wastes other than those specified in Part A or Part -B if they possess any of the hazardous characteristics specified in Part -C of that Schedule;

5. Some of the relevant provisions of this rule are as under:-

(a) Rule 12 of chapter IV of the said Rules "The Ministry of Environment and Forests shall be the Nodal Ministry to deal with the trans-boundary movement of the hazardous wastes and to grant permission for transit of the hazardous wastes through any part of India.

(b) Rule 13 of the said Rules (1) No import of the hazardous wastes from any country to India for disposal shall be permitted. (2) The import of Hazardous Waste from any country shall be permitted only for the recycling or recovery or reuse.

(c) Rule 14 of the said Rules "(1) The import and export of the hazardous wastes specified in Schedule-III, shall be regulated in accordance with the conditions laid down in the said schedule:

(2) Subject to the provisions contained in sub-rule (1),

- (i) the import or export of the Hazardous wastes specified in Part A of Schedule-III shall require Prior Informed Consent of the country from where it is imported or exported to and shall require the license from the Directorate General of foreign Trade and the prior written permission of the Central Government;
- (ii) the import of the hazardous wastes specified in Part B of Schedule -III shall not require Prior Informed Consent of the country from where it is imported;
- (iii) the import and export of the hazardous wastes not specified in Part A and Part B of Schedule **III** but having the hazardous characteristics outlined in Part C of the said Schedule shall require the prior written permission of the Central Government before it is imported into or exported from India. as the case may be.

(d) Rules 16 of the said Rules prescribes the Procedure for import of Hazardous Waste -

(1) A person intending to import or transit for trans-boundary movement of hazardous wastes specified in Schedule-III shall apply in Form 7 and Form 8 to the Central

Government of the proposed import wherever applicable, together with the Prior Informed Consent, which ever applicable and shall send a copy of the application, simultaneously, to the concerned State Pollution Control Board to enable them to send their comments and observations, if any, to the Ministry of Environment and Forests within a period of thirty days .....

6. Since the imported goods also falls under part-A of Schedule-III of the said rules as per the Test Report submitted by the CRCL, New Delhi, Prior Informed Consent of the country from where it is imported or exported to is required. The license from the Directorate General of Foreign Trade is also required and the prior written permission of the Central Government in accordance to Rule 14 of the Hazardous Waste (Management, Handling, Trans boundary and Movement), Rules, 2008 is also needed. However, the importer has neither produced any license from the Directorate General of foreign Trade nor any prior written permission of the Central Government in accordance to Rule 14 of the Hazardous Waste (Management, Handling, Trans boundary and Movement), Rules, 2008 is submitted. Therefore, they have violated the provisions of Rules of Hazardous Waste (Management, Handling, Trans boundary and Movement), Rules, 2008 by importing the hazardous waste without following the due procedures of the said Rules. Therefore the goods under reference are liable to confiscation under section 111 ( d ) of the Customs Act, 1962 . The importers are also liable to penalty under section 112 ( a ) of the Customs Act,1962. The Customs Broker M/s Rishi Kiran Road Lines, who appears to have failed in complying with the obligations of CHA as stipulated under Regulations 11 of the Customs Brokers Licensing Regulations, 2013 in so far as they have failed to advise his client to comply with the provisions of the Act and in case of non compliance, shall bring the matter to the notice of the Assistant/Deputy Commissioner of Customs.

7. In view of above, M/s Kesri Oil Private Ltd., Faridabad were issued Show Cause Notice bearing F. No. S/10-16/2013-14 Gr.I dtd. 04.12.2014 calling upon them to show cause to the Joint Commissioner of Customs, Kandla as to why: -

i) 212.6 MTs of Calcium Base Grease covered under above mentioned three Bills of Entry should not be confiscated in terms of Section 111 (d) of the Custom Act, 1962.

(ii) The penalty under section 112 (a) of the Customs Act, 1962 should not be imposed on the importers.

8. M/s Rishi Kiran Road Lines, Customs Broker were also called upon to show cause to the Joint Commissioner, Custom House, Kandla as to why penalty *under section* 112 (a) should not be imposed on them. And why separate action should not be initiated against them under section 146 of the Customs Act,1962 read with Regulations 11(d), (e) of the Customs Broker Licensing Regulations, 2013.

9. Further, the said SCN was decided vide Order-in-Original No. KDL/JC/RMG/10/2014-15 dated 26.03.2015, wherein the adjudicating authority has passed the following order:-

- a. Confiscation of 212.60 Mts of Calcium Grease. imported vide Bills of Entry Nos. 3136380,3136733 & 3136901 all dated 30.08.2013 valued as Rs.52,99,714/- under section 111(d) of Customs Act, 1962 read with Hazardous Waste (Management Handling and Transboundary Movement) Rules, 2008. However had given an option to the importer to re-export the said goods on payment of fine of Rs. 5,00,000/- (Rupees Five Lakh only).
- b. Imposition of penalty of Rs. 2,00,000/- (Rupees Two Lakh only) upon the importer under section 112(a) of the Customs Act, 1962.
- c. Imposition of penalty of Rs. 50,000/- (Rupees Fifty Thousand only) upon the Custom Broker (CB) under section 112(a) of the Customs Act, 1962.
- d. Dropped the proceeding under Section 146 of the Customs Act, 1962 readwith Regulations 11 (d) & (e) of the Custom Broker Licensing Regulations, 2013 upon the Custom Broker.
- e. Goods are to be re-exported to its supplier i.e. M/s. Remel International FZE, Saif Zone, Sharjah, UAE.

10. Being aggrieved with the said OIO, the Importer filed an appeal before the Hon'ble Commissioner of Customs (Appeals), Ahmedabad, who vide Order-in-Appeal No. KDL-CUSTM-000-APP-037-15-16 Dated 04/08/2015 ordered, which is reproduced as under:-

*"I set aside OIO No. KDL/JC/RMG/10/2014-15 dated 26.3.2015 passed by Joint Commissioner of Customs, Kandla and direct the lower authority to re-draw samples from the consignment in the presence of Importer's representative and sent it for re-test to any of the laboratories as specified in Board's Circular No. 09/2009-Customs dated 23.02.2009."*

11. Being aggrieved by the above Order-in-Appeal, department preferred an appeal before the Hon'ble CESTAT, who vide Order No. A/11181/2016 dated 20.10.2016 dismissed the departmental appeal as non-maintainable with observation that the disputed amount in the appeals is Redemption Fine of Rs.5,00,000/- in addition to penalties of Rs. 2,00,000/- on the importer and Rs.50,000/- on the CB, which is below the monetary limit of Rs. 10 Lakhs for disputing cases before the CESTAT.

12. The said CESTAT Order has been accepted by the Principal Commissioner of Customs, Kandla on 15.11.2016. Therefore, the OIA No. KDL-CUSTM-000-APP-037-15-16 DATED 04/08/2015 issued by the Commissioner of Customs (Appeals), Ahmedabad remains stand.

13. Para 2 of Circular No. 9/2009-Customs dated 23.02.2009 stipulates that:-

*"Now, it has been informed by Ministry of Environment and Forest (MoEF) that if Customs authorities need assistance for undertaking sampling and analysis of the hazardous waste consignments, they could utilize the facilities of the recognised laboratories. These laboratories are recognized from time to time by the Ministry of*

*Environment and Forests under Section 12(1)(b) and Section 13 of the Environment (Protection) Act, 1986 (EPA) read with Rule 10 of the Environment (Protection) Rules, 1986. The labs notified by MoEF are authorized to test all kinds of samples of hazardous wastes. The details of these laboratories are available at the website of the Ministry at: <http://envfor.nic.in/>.”*

14. Following the direction imparted by the Commissioner of Customs (Appeals), Ahmedabad vide OIA No. KDL-CUSTM-000-APP-037-15-16 Dated 04/08/2015, the samples were re-drawn and were sent for testing and analyzing to M/s Kadam Environmental Consultants, Vadodara (one of the recognised laboratories by Ministry of Environment & Forests).

15. M/s Kadam Environmental Consultants, Vadodara vide letter-dated 01/02/2017 has reported the following:-

*“The samples of Calcium based grease imported vide B/E No. 3136380, 3136733 & 3136901 have been analysed and the results are as follows as per the toxicity test which was carried out for the parameters, considered relevant to the case:-*

- *The samples are in the form of brownish greasy mass.*
- *The samples are found to be non-hazardous with respect to Hazardous Waste (Management, Handling and Trans-boundry Movement) Rules, 2008.*

**PERSONAL HEARING & DEFENCE REPLY:-**

16. No written submission was filed either by the importer or by the CB. In order to follow the principle of natural justice, personal hearing in the matter has been given on dated 16/03/2017, 24/03/2017 & 29.03.2017. Sh. Hemant Shah, authorized representative appeared on behalf of the importer M/s Kesari Oil Pvt. Ltd., Faridabad on dated 29.03.2017 and stated that the case may be decided on the basis of re-testing report as ordered by the Commissioner of Customs (Appeals), Ahmedabad. Similarly, Sh. Dinesh N. Gupta, Partner of M/s Rishi Kiran Roadlines, Customs Broker remained present on 29.03.2017 and stated that they have filed the Bills of Entry on the basis of documents given by the importer.

**DISCUSSION & FINDINGS:**

17. I have carefully gone through the entire case records i.e. SCN, Order-in-Original issued earlier in the matter, Order-in-Appeal issued by the Commissioner of Customs (Appeals), Test & analysis reports submitted by M/s Kadam Environmental Consultants, Vadodara (one of the recognized laboratories by Ministry of Environment & Forests) etc.

18. The issue to decide in the instant case is whether the impugned goods are as declared non-hazardous or covered under the provision of the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 being mis-declared and hazardous waste.

19. I find that M/s. Kesri Oil Pvt Ltd, 13 / 4 Mathura Road, Faridabad, Haryana through their Customs Broker M/s. Rishi Kiran Road lines, Gandhidham had filed

three Bills of Entry for home consumption bearing No. 3136380, 3136733 & 3136901 all dated 30.08.2013 for clearance of total 212.6 MTs of Calcium Base Grease packed in 1200 Drums.

20. I find that para 2 of the Board Circular No. 09/2009-Customs dated 23-02-2009 issued from F. No. 401/148/2008-Cus-III provides that "the labs notified by MoEF are authorized to test all kinds of samples of hazardous wastes." Further, para 4 of the said Circular also states that "the field formations may consider utilizing the services of these laboratories for getting the consignments of hazardous wastes and substances tested."

21. The Board's instructions are mandatory to be followed by the officers of the Board as held by the Constitutional Bench of the Hon'ble Apex Court in case of Dhiren Chemicals-2002 (139) ELT, 3(SC).

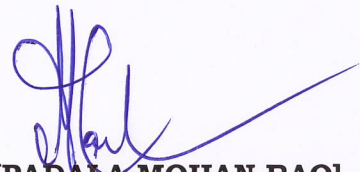
22. Further, as per the direction of the Commissioner of Customs (Appeals), Ahmedabad vide OIA No. KDL-CUSTM-000-APP-037-15-16 dated 04/08/2015, the samples were re-drawn and were sent to M/s Kadam Environmental Consultants, Vadodara (recognized & notified laboratory by MoEF) for re-testing as per Circular No. 09/2009-Customs dated 23.02.2009.

23. As per the test report DOC. I.D.: ISO-KEC-SOL. WAT. ANA. R (Bs/E No. 3136733, 3136380 & 3136901) dated 01/02/2017 from M/s Kadam Environmental Consultants, Vadodara approved by Shri R.G. Kotashthane, Chief Scientific Officer of the lab, the samples are found to be non-hazardous in terms of Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008.

24. In view of the above, I pass the following order:-

**ORDER**

I hereby drop the proceeding initiated under Show Cause Notice F. No. S/10-16/2013-14 Gr.I dated 04/12/2014.



**[PADALA MOHAN RAO]  
ADDITIONAL COMMISSIONER**

To,

1. M/s. Kesri Oil Pvt Ltd,  
13 / 4 Mathura Road, Plot No. 6,  
Sector- 27-C, Faridabad- 121 003 (Haryana).
2. M/s. Rishi Kiran Roadlines,  
Customs Broker, Kiran House,  
Plot No. 8, Sector-8  
Gandhidham (Kutch)

**Copy to:-**

- 1) The Deputy/Asstt Commissioner (RRA), Custom House, Kandla
- 2) The Deputy/Asstt Commissioner (Gr.I), Custom House, Kandla
- 3) The Deputy/Asstt. Commissioner(Disposal), Custom House, Kandla
- 4) Guard File.