



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	File No.	S/10-34/Adj/ADC/Karan/2019-20
B	Order-In-Original No.	KDL/ADC/GCI/01/2020-21
C	Document Identification Number	20200471ML00006JDE01
D	Passed by	SH. GYAN CHAND JAIN, ADDITIONAL COMMISSIONER
E	Date of order	15.04.2020
F	Date of issue	15.04.2020
G	SCN No. & Date	SCN F.No S/15-12/UREA/SIIB/2018-19 -Pt.I (Karan) dated 25.09.2019
H	Noticee(s)/Co-Noticee(s)	M/s Karan Chemicals, 48-49 Amarnath Estate, Narol, Ahmedabad- 382405

1. यह अपील आदेश संबन्धित को नि प्रदान शुल्क: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
मंजिल वी 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
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 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 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 नियम (अपील), अधिनियम शुल्क सीमा और 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, आयुक्त (अपील) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
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 alone is in dispute.

BRIEF FACTS OF THE CASE

M/s Karan Chemicals, 48-49 Amarnath Estate, Narol, Ahmedabad- 382405 (herein after also referred to as "the importer" for the sake of brevity), having IEC No. 0812011732, engaged in import of Technical Grade Urea falling under CTH 31021000 of the first schedule to the Customs Tariff Act, 1975, on high sea purchase basis from State Trading Enterprises viz. MMTC, during the period from April, 2012 to 27.04.2015 without having a licence for import of Urea from Director General of Foreign Trade (DGFT).

2. Vide letter F.No. DRI/DZU/JRU/19/ENQ.30/2016 dated 07.03.2018 an intelligence was received from the Joint Director, Directorate of Revenue Intelligence, Regional Unit, Jaipur that some importers of urea had violated the Provisions of Foreign Trade Policy in import of Technical Grade Urea during the period from April, 2012 to 27.04.2015. (RUD-1). In terms of Notification No. 04/2015-2020 dated 28.04.2015 issued by the Ministry of Commerce & Industry, Department of Commerce, Udyog Bhawan, New Delhi, Import policy of Urea under ITC (HS) code 31021000 was amended. Import of "Urea whether or not in aqueous solution" allowed to be imported by State Trading Enterprises only prior to 28.04.2015. As per revised policy besides State Trading Enterprises, import of Industrial Urea/Technical Grade Urea shall be free subject to Actual User Condition.

2.1. Further, the Joint Director, Directorate of Revenue Intelligence, Regional Unit, Jaipur, vide letter F.No. DRI/DZU/JRU/19/ENQ.30/2016 dated 07.03.2018, communicated that as per Foreign Trade Policy 2009-2014, there were only three State Trading Enterprises viz. STC, MMTC and Indian Potash Limited (para 2.11 of FTP); that on enquiry, the Deputy Director General of Foreign Trade, DGFT, New Delhi, vide his letter F.No. 01/89/180/102/AM-02/PC-2[A]/Part-II/800 dated 14.09.2017 informed that DGFT permitted import of Urea (46% granular) from Oman to M/s IFFCO and M/s KRIBHCO, New Delhi; that apart from the above, following parties were permitted during 2011-15 for import of urea:-

- (i) M/s Coromandel International, Secunderabad;
- (ii) M/s Zuari Agro Chemicals Ltd., Gurgaon;
- (iii) M/s Blusky Automotive Pvt. Ltd., Mumbai;

2.2. Foreign Trade Policy defines State Trading Enterprises as "State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any goods, import or export of which is governed through exclusive or special privileges granted to State Trading Enterprises (STEs) may be imported or exported by STE(s) as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix 2J. However, it is provided that DGFT may grant an authorization to any other person to import and export any of these goods.

2.3. As per para 2.11 of Foreign Trade Policy 2009-2014, 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.

3. Whereas, it appeared that Ministry of Chemicals and fertilizers were inviting tender for handling and distribution of Urea. Some third parties other than State Trading Enterprises were filing Bills of Entry and importing Urea, which they purchase on High Sea Sale basis. In fact, State Trading Enterprises were purchasing Urea from outside India and instead of directly importing into India they are selling Urea to third parties who have been issued tenders from Ministry of Chemical and Fertilizers for handling and distribution of Urea on High Sea Sale basis. In the process, ownership of Urea was being transferred and such third parties were filling the Bills of Entry.

4. The importer had filed Bill of Entry No. 7903862 dated 10.09.2012 at Kandla port, for clearance of 100 MTS Technical grade prilled urea purchased on High Sea Sales basis from MMTC Limited (original importer) valued at Rs.26,10,837/- on which customs duties amounting to Rs.6,74,966/- was paid and Out Of Charge was granted by the proper officer on 13.09.2012.

5. Statement of Shri Deepak Chandrakant Mulchandani, Proprietor of M/s Karan Chemicals, 48-49 Amarnath Estate, Narol, Ahmedabad- 382405, was recorded on 13.02.2019, (RUD-2) wherein he, *inter-alia* stated that M/s Karan Chemicals is a Proprietorship firm and engaged in trading activity of various type of chemicals including Technical grade urea from last 10 years; that M/s Karan Chemicals is having IEC code NO. 0812011732; that they have a valid permission for import of Technical grade urea for industrial use issued by the Joint Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers vide No. 6-1/2012-FM dated 15.05.2012 and submitted copy of permission/license No. 6-1/2012-FM dated 15.05.2012 along with copies of Bill of Entry, High Sea Sale Invoice No. MMTC/AHD/FERT/2012-13/003 dated 22.08.2012 issued by M/s MMTC Ltd. and other relevant documents such as pages of RG 23 D register, sales invoices etc.; that he entered into an agreement of High Sea Purchase of technical grade prilled urea with M/s MMTC Ltd., Ahmedabad and filed BE No. 7903862 dated 10.09.2012 and cleared the same on payment of appropriate customs duties.

6. On scrutiny of the permission issued by the Asstt. Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers vide F. No. 6-1/2012-FM dated 15.05.2012 it is observed that permission was granted to import 10000 MT Technical Grade Urea for industrial use through

any state trading Enterprise i.e. MMTC, IPL, STC or any other company under license from DGFT during the year 2012-13 subject to various conditions. As per condition Sr. No. xiv which reads as follows :-

“ TG urea users shall inform this department through STEs/any other company under licence from DGFT, from whom he/she is buying TG Urea, giving information w.r.t. product being produced by using TG Urea, quantity of TG Urea needed to manufacture one MT (or any other unit) of the product, total quantity produced in last year & in last month, quantity of TG Urea used in that year/month respectively.”

From the above, it implies that the permission was granted to the importer for domestic purchase of technical grade urea from STEs/ any other company under licence from DGFT but in the instant case the importer has purchased the Technical grade urea on high sea sales basis from M/s MMTC Ltd., a State Trading Enterprise which is to be considered as “ Import” of goods which is contrary to the conditions of the permission granted by Ministry of Fertilizers. Therefore, it clearly indicates that the importer had violated the permission No. 6-1/2012-FM dated 15.05.2012.

7. Para 2.11 of General Provisions regarding Import and Export under Foreign Trade Policy 2009-2014 stipulates as follows:-

2.11 Any goods, import or export of which is governed through exclusive or special privileges granted to STE(s), may be imported or exported by STE(s) as per conditions specified in ITC (HS). DGFT may, however, grant an Authorisation to any other person to import or export any of these goods.

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.

7.1. The Customs Act, 1962 defines the meaning of Import, Importer, & India which is as under:-

Section 2(23) -“Import” with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 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 or any person holding himself out to be the importer;

Section 2(27)-"India" includes the territorial waters of India;

7.2. As per the Foreign Trade (Development and Regulation) Act, 1992, definition of "Import" is "in relation to goods bringing into India any goods by land, Sea or Air". The definition of "Importer" as per Foreign Trade (Regulation) Rules, 1993 "means a person who imports goods and holds a valid IEC No.". As per Foreign Trade Policy importer means 'person who imports or intends to import and holds an IEC No., unless otherwise specifically exempted'.

8. Whereas, it appeared that no other importer, other than STEs and importers mentioned at para 3 above was permitted to import Urea during the material period. Thus, importer had imported total 100 MT of Technical grade prilled urea having assessable value of Rs. 26,10,837/-, in violation of provisions of Foreign Trade Policy enforced at the material time. The importer had paid total Customs duties of Rs. 6,74,966/- against the import and clearance of 100 MTs of Technical grade prilled urea. The importer was fully aware about the fact that the goods in question was a canalised item and he had suppressed the facts by producing the licence No. 6-1/2012-FM dated 15.05.2012 issued by the Assistant Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers in guise of licence issued by the DGFT. Thus, the act on the part importer for wilful mis-statement and the suppression of facts at the material time draw the attention that the goods were improperly imported into India and liable for confiscation under Section 111 of Customs Act, 1962.

9. Whereas, it appeared that importer had imported 'Technical grade prilled urea' without having a valid licence issued from Director General of Foreign Trade which regulate the Exim Policy. Since, the import of 'Technical Grade Urea' is a canalised item and permitted to import by State trading Enterprises or by the import licence holder issued by DGFT. Thus, it appeared that the goods imported by the importer vide Bills of Entry No. 7903862 dated 10.09.2012 at Kandla port, for clearance of 100 MTS 'Technical grade prilled urea' purchased on High Sea Sales basis from MMTC Limited (original importer) valued at Rs.26,10,837/- on which customs duties amounting to Rs.6,74,966/- was paid, liable to confiscation under the provisions of Section 111 (d) of Customs Act, 1962.

10. Whereas, it appeared that the importer was fully aware about the provisions of restriction imposed on the import of "Technical Grade Urea" and allowed to import through STEs and a valid licence holder persons. The importer was having a culpable mind of state and that the act of omission and commission made on his part that the act of import of goods were liable for confiscation and thus they have rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

11. Accordingly, a Show Cause Notice F.No. S/15-12/UREA/SIIB/2018-19/Pt.I(Karan) dated 25.09.2019 was issued to M/s Karan Chemicals, 48-49 Amarnath Estate, Narol, Ahmedabad- 382 405 asking them to show cause as to why:-

- (i) The Technical grade prilled urea of 100 MT valued to Rs. 26,10,837/- covered under Bills of Entry No. 7903862 dated 10.09.2012 should not be confiscated under Section 111 (d) of the Customs Act, 1962;
- (ii) Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them.

DEFENCE REPLY AND PERSONAL HEARING

12. Vide letter dated 05.11.2019 the importer has filed their defence reply to the Show Cause Notice wherein they have inter-alia submitted that they have not contravene or violate the provisions of Foreign Trade Policy or Customs Act, 1962. Therefore, the provisions of Section 111(d) and Section 112 of the Customs Act, 1962 do not applicable in their case as they bought the product viz. Technical Grade Prilled Urea on high sea purchase basis from MMTC Limited a state Trading Enterprises under an agreement. Hence, MMTC Limited is a prime importer in this case. For purchase of Technical Grade Prilled Urea from MMTC Limited they have permission letter dated 15.05.2012 from Ministry of Chemical & Fertilizer. They have already paid duty and accordingly clearance was allowed. This is time barred case as the import was taken place almost 7 years back. They have repeatedly submitted that they are not direct importer and have not violated any law of Customs Act, 1962 and Foreign Trade Policy. They have concluded with a request to drop the proceedings.

13. In order to follow the principal of natural justice, Personal hearing was fixed on 18.12.2019, 09.01.2020 and 22.01.2020 in this case. Therefore, ample opportunity was given to the importer to defend their case. But, neither importer nor his representative has appeared for personal hearing on the fixed time and date. Therefore, the case is to be decided on the basis of documents available on record and the submission given by the importer vide his letter dated 05.11.2019 as discussed in the above para.

DISCUSSION AND FINDINGS

14. I have carefully gone through the case records, documents relied upon under the Show Cause Notice, facts of the case and the submissions made by the importer/noticee. Accordingly, the SCN is taken into consideration for adjudication.

15. The main issue to be determined by me in this case is that whether the importer, having bought the goods from STE namely MMTC on "High Sea Sales" basis, imported the Technical Grade Prilled Urea of 100 MT valued to Rs. 26,10,837/- covered under Bills of Entry No. 7903862 dated 10.09.2012 in contravention of the provisions of Foreign Trade Policy prevailing at the material time and thereby they have rendered the goods liable to confiscation under Section

111(d) of the Customs Act, 1962 and they have rendered themselves liable to penal action under Section 112 *ibid*.

Therefore, the prime issue to be decided in the present case is to determine whether importer M/s Karan Chemicals who had bought the goods from STE (MMTC) on "High Sea Sales" basis and filed Bills of Entry to get cleared the goods from the customs would be treated as importer or otherwise in view of the definitions provided under Customs Act, 1962 and Foreign Trade Policy as they were permitted to import the goods viz. 'Technical Grade Prilled Urea' through any STE or any other company under License from DGFT. The proposals made in the impugned show cause notice related to confiscation of imported consignment and penal action under Custom Act, 1962 are to be decided accordingly thereafter.

16. On going through the definition of the words viz. 'Import', 'Importer' and 'India' as provided under Section 2(23), Section 2(26) and Section 2(27) of the Customs Act, 1962, I find that in the instant case M/s Karan Chemicals would be considered as an importer as per Customs Act, 1962. The abstract of these sections is reproduced hereunder for ease of reference:-

Section 2(23) - "Import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 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 or any person holding himself out to be the importer;

Section 2(27) - "India" includes the territorial waters of India;

17. Further, I find that as per the Foreign Trade (Development and Regulation) Act, 1992 as amended from time to time, definition of "Import" is "in relation to goods bringing into India any goods by land, Sea or Air". The definition of "Importer" as per Foreign Trade (Regulation) Rules, 1993 "means a person who imports goods and holds a valid IEC No.". As per Foreign Trade Policy importer means 'person who imports or intends to import and holds an IEC No., unless otherwise specifically exempted". Therefore, I find that as per Foreign Trade Policy too M/s Karan Chemicals would be considered as an importer.

18. To understand the "High sea sales" transactions, I have searched the literature available on the subject. The literature downloaded from the reputed websites is as under:

Website: wiki.scn.sap.com

Business Scenario

High sea sales is effected by exchange of documents at a point beyond the territorial waters to avoid custom duties. Means high sea sales is a sale made while its in sea only. Thus, High Sea sale takes place when the cargo is already loaded on a ship and sailing on the

high seas (international waters, under no jurisdiction) without actually being sold to the final buyer yet. Seller is looking for a buyer, while shipment is on the way. Once the cargo is sold, the captain of the vessel is notified to change course and deliver it to the new buyer's port. High Sea Sales carried out outside the territorial jurisdiction of India.

Website: www.taxconnect.co.in

High Sea Sale Transaction means Sale Transaction done when goods are actually at High Sea i.e. during sea transit between Port of Loading and Port of Discharge. The date of transaction (agreement) should be between Bill of lading date and Vessel arrival date at Port of discharge. High Sea Sale is done mostly by Traders, sole Indenting Agent (of the Foreign Supplier) who buys in large quantity and then look out for buyers at Destination Country.

On concluding the High Sea Sales agreement the bill of lading (B/L) should be endorsed in favor of the new buyer. In respect of air shipment, High Sea seller should write to the airline/consol agent informing that an High Sea Sales agreement has been established with the High Sea Sales buyer and that the carrier document should be considered as endorsed in favour of High Sea sales buyer and further the import General Manifest (IGM) should be filed by the carrier in name of High Sea buyer.

High Sea sale is considered as sale contract carried out outside the territorial jurisdiction of India. Accordingly, no sale tax is levied in respect of High Sea sales. The Custom documents (B/E) is either filed in the name of High Sea buyer or such Bill of entry as endorsement indicating High Sea buyer's name. The title of goods transfer to High Sea buyer prior to entry of goods in territorial jurisdiction of India. The delivery from customs is therefore on account of High Sea buyer.

These literature amply shows that the transaction taken place under High Sea Sales are considered as sale carried out outside the territorial jurisdiction of India and therefore levied no sale tax in respect of High Sea sales.

19. The above deliberation leads me to conclude that in the instant case M/s Karan Chemicals would be considered as an importer and the goods viz. 'Technical Grade Prilled Urea' bought by him from STE (MMTC) on "High Sea Sales" basis cannot be treated as imported through any STE or any other company under License from DGFT.

20. In view of the above discussion, it is unambiguously proven that M/s Karan Chemicals have imported the goods viz. 'Technical Grade Prilled Urea' having assessable value of Rs. 26,10,837/-, in violation of provisions of Foreign Trade Policy enforced at the material time as much as the condition stipulated for import through any STE or any other company under License from DGFT, as per permission / licence No. 6-1/2012-FM dated 15.05.2012 issued by the Assistant Director, Department of Fertilizer, Ministry of Chemicals & Fertilizers, were not at all complied with by the importer M/s Karan Chemicals, in respect to the import of 'Technical

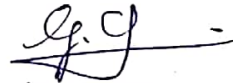
Grade Prilled Urea' made by them under the aforesaid Bills of Entry. Therefore, the said goods being restricted / canalised goods and imported in violation of FTP 2009-2014 are liable for confiscation under Section 111(d) of the Customs Act, 1962.

21. As discussed above, I find that the impugned goods imported by the importer in contravention of the provisions of FTP 2009-2014 as notified under Foreign Trade (Development & Regulation) Act, 1992, totally weighing 100 MTs imported vide Bills of Entry No.7903862 dated 10.09.2012, are liable for confiscation under section 111(d) of Customs Act, 1962. However, the goods were not seized and are not available physically for confiscation. Further, I find that the importer by their act of commission and omission making the goods liable for confiscation under section 111(d) of Customs Act, 1962 has made themselves liable for penal action under section 112 of Customs Act, 1962.

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

ORDER

- (i) I hold the goods i.e. Technical grade prilled urea of 100 MT valued to Rs. 26,10,837/- covered under Bills of Entry No. 7903862 dated 10.09.2012 liable to confiscation under section 111(d) of Customs Act, 1962. Since the goods were not seized and are not available, I refrain from imposing redemption fine under Section 125 of the Customs Act, 1962.
- (ii) I impose penalty of Rs. 1,30,542/- (Rupees One Lakh Thirty Thousand Five Hundred Forty Two Only) upon M/s Karan Chemicals under Section 112 of the Customs Act, 1962 for acts of omission and commission as discussed above.



(G. C. Jain)

Additional Commissioner,
Customs, Kandla.

Dated: 15 .04.2020

F. No. S/10-34/Adj/ADC/Karan/2019-20

To
M/s Karan Chemicals,
48-49 Amarnath Estate,
Narol, Ahmedabad- 382405

By RPAD/Speed post:

Copy to:

1. The Commissioner of Customs, Kandla.
2. The Deputy/Assistant Commissioner of Customs, Group-II, Custom House, Kandla.

3. The Deputy/Assistant Commissioner (RRA/ TRC/SIIB) Custom House, Kandla.
4. The Superintendent(EDI), Custom House, Kandla with a request to upload the said order on the official website of this Commissionerate.
5. Guard File