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OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62

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|---|---------------------------------------|---|
| A | File No. | VIII/48-763/Misc/Gr.I/Radiance/17-18 |
| B | Order-in-Original No. | MCH/661/DC/CKP/Gr-I/MCH/2019-20 |
| C | Passed By | Dr. C.K. Patel Deputy Commissioner of Customs Import Section-Group-I |
| D | Date of Order | 28.02.2020 |
| E | Date of Issue | 28.02.2020 |
| F | SCN No. & Date | SCN No. VIII/48-763/Misc/Gr.I/Radiance/17-18 dated 15.11.2017 |
| G | Noticee / Party / Importer / Exporter | M/s Radiance Chemsol Private Limited |
| H | DIN No. | 20200271MO00007BA740 |

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

- 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.
- 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.
- 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.
- 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.
- 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, where penalty alone is in dispute.

Sub: Import of “Furnace Oil” vide Bill of Entry No. 2778797 dated 08.08.2017 by M/s Radiance Chemsol Private Limited, Shop No. 3, Daulat Minar CHS Ltd, Shahaji Raje Road, Vile Parle East, Mumbai 400057 for violation of Customs Act and Rules thereon.

Brief fact of the case:-

M/s Radiance Chemsol Private Limited, Shop No. 3, Daulat Minar CHS Ltd, Shahaji Raje Road, Vile Parle East, Mumbai 400057 (IEC: 0311063837) (hereinafter referred to as importer) filed Bill of Entry (B/E) No. 2778797 dated 08.08.2017, through their Customs Broker (CB) M/s. Tiger Logistics (India) Limited, seeking clearance of goods declared as 'Furnace Oil(Non IMCO)' under Custom Tariff item 27101950. The declared gross weight of goods in B/E was 35940 Kgs (Gross Weight). The declared assessable value of goods was Rs. 4,90,511/-.The Bill of Lading No:- ALTSWKMUN1700183 dated 23.07.2017

2. The Bill of Entry was assessed on first check basis i.e. goods were examined physically first. The Docks Customs Officer drew the representative samples from the imported cargo and the said samples were forwarded to the CRCL Lab at Kandla Custom House vide TM No. 889 dated 11.08.2017 for testing purpose. Test results of sample received from Custom House, Lab Kandla vide Test Report No. 1570 dated 31.08.2017 with the following observations;

"The sample is in the form of dark coloured viscous liquid composed of mineral hydrocarbon oil. It has following constants;

| | |
|------------------|-----------------|
| 1. Ash Content | = 10.02% by wt. |
| 2. Water Content | = Nil |
| 3. Sediments | =Positive |

It is waste oil as per circular no. 33/2001.

3. As per para 8 of the circular no. 33/2001 off specification furnace oil/waste oil needs to be further tested to classify it into (1) off specification furnace oil/waste oil (2) waste oil/used oil fit for re-refining (3) Hazardous waste.

4. In view of the above test result, the remnant sample was again sent to CRCL Kandla to ascertain the category under which the subject goods fall vide this office letter dated 20.09.2017 as per para 8 of circular no. 33/2001. The Test results of sample received from CRCL Kandla vide Test Report No. 2095 dated 31.10.2017 which is reproduced below:-

"The Parameters are within the prescribed range of waste oil suitable for recycling the waste oil under schedule V of Hazardous and other waste (Management and Transboundary Movement) Rule 2016. It is waste oil/used oil fit for re-refining."

5. The imported goods(waste oil) fall under the schedule IV of Hazardous and other waste (Management and Transboundry Movement) Rule 2016 can be only imported for re-cycling or re-refining by the importer that has a valid License from Gujarat Pollution Control Board(GPCB), Central Pollution Control Board(CPCB) for re-cycling or re-refining.

6. Thus, the goods imported under B/E No.- 2778797 dated 08.08.2017 appeared misdeclared for description and the goods appear to be covered under Custom Tariff Item 27109900 and under ITC(HS) are restricted for imports as Waste Oil- "others". Thus, the goods have been imported without a proper valid License from Gujarat Pollution Control Board(GPCB), Central Pollution Control Board(CPCB) or any import license from DGFT etc. and hence appear liable for confiscation under Section 111(d) & 111(m) of the Custom Act, 1962. The importer M/s Radiance Chemsol Private Limited, Shop No. 3, Daulat Minar CHS Ltd, Shahaji Raje Road, Vile Parle East, Mumbai 400057 appear to be liable for penalty under Section 112(a)(i) of the Custom Act , 1962 for their action and omission making imported goods liable for confiscation under Section 111 of the Custom Act, 1962.

7. Therefore, Show Cause Notice No. VIII/48-763/Misc/Gr-I/Radiance/17-18 dated 15.11.2017 was issued to importer M/s Radiance Chemsol Private Limited, Shop No. 3, Daulat Minar CHS Ltd, Shahaji Raje Road, Vile Parle East, Mumbai 400057 as to why:-

- (i) The said imported goods i.e. 35940 Kgs (180 drums) of 'Furnace Oil(Non IMCO)' declared assessable value of goods was Rs. 4,90,511/-, imported against Bill of Entry (B/E) No. 2778797 dated 08.08.2017 and duty liability of Rs. 4,52,436/- imported in violation of schedule IV of Hazardous and other waste (Management and Transboundry Movement) Rule 2008 not be held liable for confiscation under Section 111(d) read with 111(m) of the Custom Act, 1962.
- (ii) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962, for the reasons discussed above.

Record of Personal Hearing:-

8. Personal hearing to importer was granted on 04.05.2018, 28.01.2020 and 11.02.2020, but nobody appeared on behalf of importer and also not submitted their defence reply. Hence, I proceed to decide the said Show Cause Notice on ex-parte on the basis of available evidence on the record.

Discussion and Findings:-

9. I have gone through the Show Cause Notice dated 15.11.2017 and Test Report No. 1570 dated 31.08.2017, Test Report No. 2095 dated 31.10.2017 of CRCL Kandla. I find that goods are declared as Furnace Oil(Non IMCO) and the goods have been classified under Custom Tariff Item 27101950. However, on examination the Chemical Examiner Gr-II, at CRCL, Kandla Laboratory has informed that sample is waste oil/used oil fit for re-refining and parameters are within the prescribed range of waste oil suitable for recycling the waste oil under schedule IV of Hazardous and other waste (Management and Transboundary Movement) Rule 2016.

It is unambiguously concluded by the Chemical Examiner at CRCL Kandla that the sample is waste oil/used oil fit for re-refining and parameters obtained are within the limits prescribed under schedule V of Hazardous and other waste (Management and Transboundary Movement) Rule 2016.. Thus, it is evident that goods are Waste Oil as per Circular No. 33/2001 Cus dated 04.06.2001 and not Furnace Oil as declared.

10. I note that as per definition given in rule 3(39) in part I of Notification dated 04.04.2016 issued by the Ministry of Environment, Forest and Climate Change notified as "The Hazardous and Other Waste (Management and Transboundary) Rules 2016 'Waste Oil' means any oil which includes spills of crude oil, emulsions, tank bottom sludge and slope oil generated from petroleum refiners, installations or ships and can be used as fuel in furnaces for energy recovery, if it meets the specifications laid down in Part-B of Scheduled V of of Hazardous and Other Waste (Management and Transboundary movement) Rule 2016.

11. In view of the above, I find that the goods imported under Bill of Entry No 2778797 dated 08.08.2017 is misdeclared as Furnace Oil whereas on chemical testing is confirmed as Waste Oil. I hold that 35.94 MTs of "Waste Oil" covered under Bill of Entry No 2778797 dated 08.08.2017 have been misdeclared as "Furnace Oil" and have been

misclassified under Custom Tariff Item 27101950 and is liable to be correctly classified Custom Tariff Item 271019900 of Custom Tariff of India, where the goods are restricted for import as per ITC(HS) under heading- "other". I also hold that since the importer has not given any proper valid license from Gujarat Pollution Control Board (GPCB), Central Pollution Control Board(CPCB) or any other valid import license under DGFT, the goods appear to be liable for confiscation under Section 111(d) of the Customs Act 1962. I also hold that impugned goods are liable for confiscation under Section 111(m) of the Customs Act 1962 for misdeclaration of description as 'Furnace Oil' when on ascertain through chemical test it is found that goods imported are Waste Oil/off-specification Furnace Oil. I also hold that for their acts and omissions making goods liable for confiscation under Section 111(d) & 111(m) of the Customs Act 1962, the importer M/s Radiance Chemsol Private Limited, Shop No. 3, Daulat Minar CHS Ltd, Shahaji Raje Road, Vile Parle East, Mumbai 400057 is also liable for penalty under Section 112(a)(i) of the Customs Act 1962 . Also, I wish to deny home consumption and order for re-export being as Waste Oil covered under Scheduled IV of of Hazardous and Other Waste (Management and Transboundry movement) Rule 2016.

12. In view of the above, I pass the following order.

ORDER

- (i) I order the declared description of "Furnace Oil (Non IMCO)" for goods covered under Bill of Entry No. 2778797 dated 08.08.2017 be rejected and ascertained description "Waste Oil" should be treated as correct description of these goods.
- (ii) I order the goods covered under Bill of Entry No. 2778797 dated 08.08.2017 be classified under Custom Tariff Item 271019900 and I order that the declared classification under Custom Tariff Item 27101950 should be rejected.
- (iii) I order the confiscation of 35.94 MT of 'Waste Oil' misdeclared as 'Furnace Oil' covered under Bill of Entry No. 2778797 dated 08.08.2017 and valued at Rs. 4,90,511/-(A.V.) under Section 111(d) and 111(m) of the Customs Act, 1962 and I allow the redemption of confiscated cargo for re-export purpose only on payment of redemption fine of Rs.75,000/- (Rupees Seventy Five Thousand only) in terms of Section 125 of the Customs Act, 1962.

(iv) I also impose a penalty of Rs.75,000/- (Rupees Seventy Five Thousand only) on M/s Radiance Chemsol Private Limited, Shop No. 3, Daulat Minar CHS Ltd, Shahaji Raje Road, Vile Parle East, Mumbai 400057 in terms of Section 112(a)(i) of the Customs Act, 1962.

I have taken a lenient view while imposing fine and penalty as goods are not allowed for home consumption but allowed to be redeemed only for re-export and also due to accumulated demurrage/detention charges. The fine and penalty be paid forthwith.


(C.K. Patel)

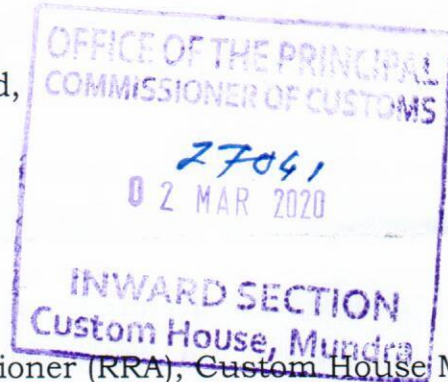
Deputy Commissioner of Customs
Import Section, Group-I
Custom House Mundra

F. No. VIII/48-763/Misc/Gr-I/Radiance/17-18

Dated: 28.02.2020

BY: SPEED POST

To,
M/s Radiance Chemsol Private Limited,
Shop No. 3, Daulat Minar CHS Ltd,
Shahaji Raje Road, Vile Parle East,
Mumbai 400057



Copy to:-

1. The Assistant/Deputy Commissioner (RRA), Custom House Mundra.
2. The Assistant/Deputy Commissioner (TRC), Custom House Mundra.
- ✓ 3. The Assistant/Deputy Commissioner (EDI), Custom House Mundra
4. M/s. Tiger Logistics (India) Limited.
5. Guard File.

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