



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

A	File No.	VIII/48-181/Gr-II/Misc/MCH/2020-21
B	Order-in-Original No.	MCH/DC/190/LD/2020-21
C	Passed by	Lokesh Damor Deputy Commissioner of Customs, Custom House, Mundra.
D	Date of Order	05.06.2020
E	Date of Issue	05.06 .2020
F	SCN NO. & Date	SCN waived vide letter dated 28.04.2020, Bill of Entry No.7154792 dated 07.03.2020
G	Noticee/Party/Importer/Exporter	1. M/s. SBBE Enterprises Private Limited, 106/ 122, Khera Kalan, Near Radhey Radhey Dharam Kanta, Delhi-110082. 2. M/s. Seema Shipping Services (I) Pvt. Ltd., 15 Police Court Lane, Room No. 12, Fort, Mumbai – 400001.
H	DIN No.	<b>20200671MO00009HA95D</b>

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 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),  
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
Having his office at 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 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.
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 (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, 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.

### **Brief fact of the case**

M/s. SBBE Enterprises Private Limited (IEC-ABBCS7934G) situated at 106/ 122, Khera Kalan, Near Radhey Radhey Dharam Kanta, Delhi-110082 (herein after referred as '*the importer*' for the sake of brevity), filed Bill of Entry No. 7154792 dated 07.03.2020 through Customs Broker M/s. Seema Shipping Services (I) Pvt. Ltd. (herein referred as 'Custom Broker') for the clearance of 15 MT of "*Stock Lot Coated Paper in End Rolls in Mix Size and GSM*". The declared unit price is US \$ 425 per MT and the declared assessable value is Rs. 4,78,669/-. The said goods are classified under tariff item 48101390 of the first schedule of the Customs Tariff Act, 1975. The said goods are supplied by M/s. DNZ Resources FZC of Sharjah, UAE under invoice No. Exp/19-20/1108 dated 10.01.2020. The same were loaded from Savannah Port in USA under Bill of Lading No. ONEYRICVJN224900 dated 31.01.2020. Copy of Bill of Lading, produced by the importer shows date laden on board as 31.01.2020 and date of Bill of Lading as 31.01.2020.

**2.** Vide DGFT notification No. 45/2015-2020 dated 31.01.2020, the Central Government introduced policy condition for goods covered under EXIM Code 4810. Vide the said notification, import of stock lot of coated paper covered under various tariff items including tariff item 48101390 has been prohibited.

**3.** The subject imported goods have been subjected to first check. On examination the goods have been found as declared. Thereafter, since the subject goods are prohibited goods, by raising online query on 09.03.2020 the importer was asked to produce purchase order and original Bill of Lading. The importer replied on 11.03.2020 and produced the same. Being prohibited goods, the same appeared liable for confiscation under Section 111(d) of the Customs Act, 1962 and the importer appeared liable to penalty under Section 112(a) *ibid*. Therefore, by online query dated 11.03.2020, the importer was asked to inform whether they want show cause notice and personal hearing. The importer replied online on 28.04.2020 that they do not want show cause notice and personal hearing.

### **Findings and discussion**

**4.** Since the importer has informed that they do not want show cause notice and personal hearing, I proceed to decide the case on the basis of available records.

5. I have carefully gone through the available records such as the documents uploaded on e-sanchit by the importer. The importer vide letter dated 23.04.2020 has requested for waiver of show cause notice and personal hearing in the matter. Hence, I proceed to decide the case on the basis of the documentary evidence available on records.

6. I find that as per documents uploaded on e-sanchit by the importer and as confirmed by way of examination the subject goods are "*Stock Lot Coated Paper in End Rolls in Mix Size and GSM*" which are classifiable under Customs Tariff Heading 4810 of the first schedule of the Customs Tariff Act, 1975. Vide DGFT notification No. 45/2015-2020 dated 31.01.2020, the Central Government introduced policy condition for goods covered under EXIM Code 4810. Vide the said notification, import of stock lot of coated paper covered under various tariff items including tariff item 48101390 is prohibited with effect from 31.01.2020. The subject were loaded on 31.01.2020 from Savannah Port in USA under Bill of Lading No. ONEYRICVJN224900 dated 31.01.2020. Thus the date laden on board as well as the date of Bill of Lading is 31.01.2020.

7. As per Para 1.05 (b) of the prevailing Foreign Trade Policy, the importability of a particular item is governed by the policy as on the date of import. The date of import is defined in para 2.17 of HBP, 2015-20. Bill of Lading is the key document for deciding the date of import. In case of change of policy from 'free' to 'restricted' / 'prohibited' / 'state trading' or 'otherwise regulated', the import already made **before** the date of such regulation/ restriction will not be affected. The said Para also provides that **the import on or after** the date of such regulation/ restriction will be allowed for import who has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operationalizing such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/ regulation.

8. As per Para 2.17 (a) of the prevailing Handbook of Procedures, the date of reckoning of import is decided with reference to date of shipment / dispatch of goods from supplying country as given in Paragraph 9.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port. The Para 9.11 (i) of Handbook of Procedures states that date of shipment/ dispatch for imports by sea shall be the date affixed on the Bill of Lading.

9. I find from the above provisions that where any goods are shipped on a date prior to the date of imposition of restriction/ prohibition, such restriction/ prohibition is not imposable on the goods. However, in the instant case date of imposition of prohibition is 31.01.2020 and the date of Bill of Lading is also 31.01.2020. Therefore, the date of import of the subject goods is not **before** the date of imposition of prohibition. Further, the importer has also not produced any Irrevocable Commercial Letter of Credit (ICLC) having date prior to imposition of the said prohibition and registered with jurisdictional RA. In view of these facts and legal position, I find that the subject goods are required to be considered as prohibited goods.

10. As discussed above, the 15 MT of "*Stocklot Coated Paper in End Rolls in Mix Size and GSM*" having date laden on board as well as date of Bill of Lading as 31.01.2020 are liable to be treated as 'prohibited' as the goods have not been imported (i.e. date of Bill of Lading) before the date of imposition of prohibition imposed vide above discussed notification dated 31.01.2020. Thus, I find that the impugned goods have been imported in violation of the prohibition imposed vide above discussed notification dated 31.01.2020 and thus, the impugned goods are liable to confiscation under section 111(d) of the Customs Act, 1962.

11. The Section 125 of the Customs Act, 1962 provides that the goods which are not prohibited goods shall be redeemed on imposition of fine and the goods which are prohibited goods may be redeemed against such fine. Thus, I find that the said provision provides that in respect of confiscated prohibited goods, the adjudicating authority has to apply discretion in respect of redemption of such goods. In the instant case, I find that the date of imposition of prohibition and the date of Bill of Lading (also date of shipment) is the same. Considering this fact and also the nature of the goods, I find that though the goods are prohibited goods, it is justifiable to grant an option to the importer for redeeming the goods. Therefore, I grant opportunity of redeeming the same on payment of fine.


12. I find that the importer has deliberately imported the 15 MT of "*Stocklot Coated Paper in End Rolls in Mix Size and GSM*" circumventing the legitimate prohibition and rendered the said goods liable for confiscation under Section 111(d) of the Customs Act, 1962. Therefore, I find that this act of omission and commission on the part of the importer has rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

13. In view of foregoing discussion and findings, I pass the following order

**ORDER**

(i) I order to confiscate the 15 MT of "Stocklot Coated Paper in End Rolls in Mix Size and GSM", covered under Bill of Entry No. 7154792 dated 07.03.2020, having declared value of Rs. 4,78,669/- under Section 111(d) of the Customs Act, 1962. I grant option to them to redeem the said confiscated goods on payment of redemption fine of Rs. 1,00,000/- (Rs. One Lakh Only);

(ii) I impose penalty of Rs. 1,00,000/- (Rs. One Lakh Only) on M/s. SBBE Enterprises Private Limited, 106/ 122, Khera Kalan, Near Radhey Radhey Dharam Kanta, Delhi-110082 under Section 112 (a) of the Customs Act, 1962 for the acts and omission on their parts, as discussed above.

  
07/06/2020

(Lokesh Damor)  
Deputy Commissioner of Customs  
Custom House, Mundra

By Speed post/ By hand/by E-mail

F.No.: VIII/48-181/Gr-II/Misc/MCH/2020-21

Dated: 05.06.2020

**To,**

1. M/s. SBBE Enterprises Private Limited, 106/ 122, Khera Kalan, Near Radhey Radhey Dharam Kanta, Delhi-110082.
2. M/s. Seema Shipping Services (I) Pvt. Ltd., 15 Police Court Lane, Room No. 12, Fort, Mumbai – 400001.

**Copy to:**

1. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
3. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
4. Guard File.

P.O(EDI)  