

	<p style="text-align: center;">सीमाशुल्क आयुक्त का कार्यालय, एनएस-II OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-II केंद्रीकृत निर्यात आकलन कक्ष, जवाहरलाल नेहरू सीमाशुल्क भवन CENTRALIZED EXPORT ASSESSMENT CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, न्हावा शेवा, तालुका -उरण, जिला -रायगढ़, महाराष्ट्र- 400 707 NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA- 400707</p>
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F. No: CUS/ESHD/OBJ/39/2025-Exp(Docks)

Date of Order: 06.11.2025

Date of Issue: 07.11.2025

DIN: - 20251178NT0000111C10

Passed By: SHRI SACHIN S PAGARE, Deputy Commissioner of Customs,
CEAC (NS-II), JNCH, NHAVA SHEVA.

Order-In-Original No.: 1347/2025-26/DC/CEAC/NS-II/CAC/JNCH

M/s. Chemetall India Private Ltd (IEC No. 0389002402)

मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए.-1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1870 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
- Any person desirous of appealing against this decision or order shall, pending the appeal, make 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. Chemetall India Private Ltd. (IEC No. 0389002402) having address at Gat No. 569, Pune Nagar Road Village Koregaon Bhima, Taluka Shirur Dist. Pune 412216 Maharashtra has filled a Shipping Bill No. 5983861 dated 08.10.2025 through their authorized Customs Broker, M/s. Tulsi Mayuri Shipping Solutions(AAXFT1804G) for clearance of export goods declared as "RX937853 Triethanolamine 85%". The Goods were classified under RITC 29221500. The Goods were intended to be exported to Singapore to a Buyer M/s Chemetall Asia PTE Ltd. The declared FOB value of the consignment was Rs. 59,910.40/-, and the Exporter has claimed a Drawback of Rs. 719/- and RoDTEP amounting to 419/- Rs.

2. **Examination Of Goods:** The Docks officer on perusal of checklist and other documents presented by the CB/Exporter observed that the item declared as "RX937853 Triethanolamine 85%" falls under SCOMET Entry 1C017, listed in Category 1C of Appendix-3 to Schedule-2 of the ITC (HS) Classification of Export and Import Items, which covers Toxic chemical agents and other chemicals. Export of such items to countries not listed in Table-I of Category 1C is restricted and allowed only against an Export Authorization issued by the Directorate General of Foreign Trade (DGFT).

3. On scrutiny, it was found that Singapore is not among the countries listed under Table-I of Category 1C, and the exporter failed to produce a valid Export Authorization as required under Foreign Trade Policy and Appendix-3 to Schedule-2 of the ITC (HS). Hence, the attempted export was in violation of DGFT restrictions.

4. It thus appears that the exporter attempted to export a restricted SCOMET item without obtaining the requisite DGFT authorization, thereby contravening the provisions of:

- Section 50(3) of the Customs Act, 1962 (duty of exporter to comply with restrictions), and
- Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 (export in contravention of FTP conditions).

5. Further, in terms of Section 2(33) of the Customs Act, 1962, the said goods are to be treated as prohibited goods, as they were attempted to be exported in contravention of DGFT restrictions, thus the goods covered under the said Shipping Bill are, therefore, liable to confiscation under Section 113(d) of the Customs Act, 1962, being goods attempted to be exported contrary to prohibition imposed under any law for the time being in force.

6. The exporter had also claimed ineligible export incentives under the said Shipping Bill, viz. Duty Drawback of Rs. 719/- and RoDTEP amount of Rs. 419/-. As the export of the goods was not permitted without an authorisation from DGFT and the same cannot be allowed to be exported, therefore no entitlement arises.

7. It is the responsibility of the exporter to ensure compliance with all restrictions and prohibitions under the Customs Act or any other law. By attempting to export restricted goods without DGFT authorization, M/s. Chemetall India Pvt. Ltd. have rendered themselves liable for penal action under Section 114(i) of the Customs Act, 1962.

8. Subsequently, the exporter vide letter dated 24.10.2025 and 03.11.2025 requested waiver of Show Cause Notice and Personal Hearing (PH).

9. RELEVANT PROVISIONS OF LAW APPLICABLE IN THIS CASE :

Following provisions of law are applicable in the present case:

Foreign Trade (Development and Regulation) Act, 1992

(i) Section 11: (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

Customs Act, 1962

- (i) *Section 2(33): "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;*
- (ii) *Section 50 (3) of the Customs Act, 1962 : "The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:*
 - (a) the accuracy and completeness of the information given therein;*
 - (b) the authenticity and validity of any document supporting it; and*
 - (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force."*
- (iii) *Section 113(d) of the Customs Act, 1962: Confiscation of goods attempted to be improperly exported, etc.*

"The following goods shall be liable to confiscation:

 - (d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*
- (iv) *Section 114(i) of the Customs Act, 1962: "Any person who, in relation to any goods, does or omit to do any act which act or omission would render such goods liable to confiscation under Section 113 or abets the doing or omission of such an act, shall be liable*
 - (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act]], whichever is the greater;*

10. From the above foregoing facts and records, it appeared that:

10.1 The Exporter has attempted to export Restricted Goods viz. "RX937853 Triethanolamine 85%" vide Shipping Bill 5983861 dated 08.10.2025 without obtaining Export Authorization issued from Directorate General of Foreign Trade (DGFT) as goods falls under SCOMET Entry 1C017, listed in Category 1C of Appendix-3 to Schedule-2 of the ITC (HS).

10.2 Therefore exporter has violated provision of Section 50(3) of the Customs Act, 1962 and Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and attempt to export restricted goods without DGFT Authorisation categorise them as prohibited goods which rendered them liable for confiscation under section 113(d) of Customs Act 1962 and as the goods have become liable for confiscation the exporter because of this act of commission and omission, which have rendered goods liable for confiscation, have also become liable for penal action in terms of provision of section 114(i) of Customs Act 1962.

10.3 Further, the scope of definition of "Prohibited Goods" as specified under Section 2 (33) of the Customs Act, 1962 is no more res-integra in light of Judgement dated 17.06.2021 of Hon'ble Supreme Court in the case of Union of India & Ors. V/s. M/s. Raj Grow Impex LLP & Ors. [CIVIL

APPEAL NO(S). 2217-2218 of 2021 (Arising out of SLP (C) Nos. 14633-14634 of 2020)]. It is settled that "Prohibition" under aforesaid provision would include every type of "Prohibition" and would include the "Restrictions". Further, in self-assessment era, it is the responsibility of the Exporter to ensure compliance with the Restriction or Prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. Thus, by attempting to export the Restricted Goods without Export Authorisation, the Exporter has also violated the provisions of Section 50 (3) of the Customs Act, 1962 and provisions of Section 11 of Foreign Trade (Development and Regulation) Act, 1992. Thus, by these acts of commission & omission, the Exporter have rendered the goods covered under S/Bil No. 5983861 dated 08.10.2025, i.e. "RX937853 Triethanolamine 85%" liable for confiscation u/s. 113 (d) of the Customs Act, 1962 and therefore the Exporter appears liable for penalty u/s. 114 (i) of the Customs Act, 1962.

10.4 The exporter vide letter dated 24.10.2025 has accepted the departments contention and willing to pay fine/penalty which arises from the departments proceeding and also requested for waiver of Showcause Notice, Personal Hearing and permission of Back to Town for goods. Further the exporter vide letter dtd. 03.11.2025 has informed that they have been explained the provisions of section 113(d) and 114(i) of the Customs Act 1962 and they have understood that their goods have become liable for confiscation under section 113(d) and because of their act of omission and commission they too have become liable for penal action under section 114(i) of the Customs Act.

10.5 Since the Exporter has admitted the case of the Department and has further requested for waiver of the SCN and the PH for the said consignment and requested to take lenient view while deciding the case, vide letter dated 24.10.2025 and 03.11.2025. Accordingly, in terms of first provision of Section 124 of the Customs Act, 1962, written notice has not been given to the Exporter and the charges have been orally explained to them.

11. RECORDING OF PERSONAL HEARING

As the Exporter vide letter dated 24.10.2025 and 03.11.2025 has specifically requested for waiver of SCN and PH. Therefore, no PH was conducted in the present case

FINDINGS AND DISCUSSION

12. I have carefully gone through the facts of the case, records available and written submission of the Exporter. I have taken into account the letters dated 24.10.2025 and 03.11.2025 submitted by M/s. Chemetall India Pvt. Ltd., respectively, wherein Exporter has requested waiver of issuance of Show Cause Notice and Personal Hearing and has also informed that charges under the provision of section 113(d) and 114(i) have been explained to them and they have understood the same. The waiver request being voluntary and unconditional, the same is accepted and the case is being decided on merits based on the available records.

13. It is observed that the goods covered under Shipping Bill No. 5983861 dated 08.10.2025 were declared as "RX937853 Triethanolamine 85%", having FOB value of Rs. 59,910.40/-, and were destined for Singapore. As per the examination conducted at the Docks, the item "Triethanolamine 85%" was found to be a SCOMET item figuring under Entry 1C017 of Category

1C in Appendix-3 to Schedule-2 of the ITC (HS) Classification of Export and Import Items, which covers Toxic chemical agents and other chemicals.

14. As per the provisions of Appendix-3 to Schedule-2 of the ITC (HS), export of chemicals covered under Category 1C to countries other than those specified in Table-I is restricted and allowed only against an Export Authorization issued by the DGFT. It is on record that Singapore is not listed among the permitted countries under Table-I, and no Export Authorization has been produced by the exporter.

15. Foreign trade Policy 2023 mandates that export of SCOMET items is allowed only with prior Export Authorization from DGFT. The exporter has failed to comply with this requirement. Therefore, the attempted export of the subject goods is in clear violation of the restrictions imposed under the Foreign Trade (Development & Regulation) Act, 1992 read with the Foreign Trade Policy (FTP) 2023.

16. Under Section 50(3) of the Customs Act, 1962, it is the obligation of the exporter to ensure compliance with all restrictions and prohibitions applicable to the goods being exported. Further, Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 provides that no export shall be made in contravention of any provisions of the Foreign Trade Policy. By attempting to export restricted SCOMET goods without authorization, M/s. Chemetall India Pvt. Ltd. have contravened these provisions.

17. The export of restricted goods without authorization constitutes an attempt to export goods contrary to the prohibition imposed under law. Consequently, the goods are liable to confiscation under Section 113(d) of the Customs Act, 1962. The term "prohibition" under this section includes both total and partial restrictions as settled in various judicial pronouncements (e.g. Om Prakash Bhatia v. CC (2003-TIOL-06-SC-CUS)). Hence, the restriction imposed under the Foreign Trade Policy qualifies as a "prohibition" for the purpose of Section 113(d).

18. As regards export benefits, the exporter had declared Duty Drawback of Rs. 719/- and RoDTEP amount of Rs. 419/- in the Shipping Bill. However, since the goods cannot be allowed to be exported without an authorisation from DGFT, no entitlement for these benefits arises.

19. The responsibility of ensuring compliance with legal restrictions lies squarely on the exporter. M/s. Chemetall India Pvt. Ltd., having failed to obtain DGFT authorization and attempted export of restricted goods, are therefore liable to penalty under section 114(i) of the Customs Act, 1962, for their role in attempting to export goods prohibited under law.

20. In view of the above findings, I hold that the goods covered under Shipping Bill No. 5983861 dated 08.10.2025 are liable for confiscation under Section 113(d) of the Customs Act, 1962; the exporter is liable for penal action under Section 114(i) of the Customs Act, 1962; and the drawback and RoDTEP benefits claimed are inadmissible.

ORDER

ORDER

21. (i) I confiscate the goods "RX937853 Triethanolamine 85%" covered under Shipping Bill bearing No. 5983861 dated 08.10.2025, having FOB value of Rs. 59,910.40/-, filled by M/s Chemetall India Private Ltd (IEC No. 0389002402) attempted to be exported in contravention of the provisions Section 50(3) of the Customs Act, and the Foreign Trade (Development & Regulation) Act, 1992 read with Appendix-3 of Schedule-2 of ITC (HS) Classification of Export & Import Items, under the provisions of Section 113(d) of the Customs Act, 1962.

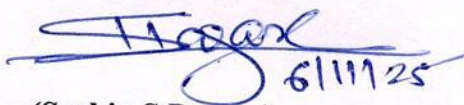
However, I offer an option to the exporter M/s. Chemetall India Private Ltd (IEC No. 0389002402) to redeem the above said goods for BACK TO TOWN in lieu of redemption fine of Rs. 20,000/- (Rs. Twenty Thousand only) in terms of provisions of section 125(1) & 125(3) of Customs Act 1962.

(ii) Accordingly, I deny and reject the duty drawback claim of Rs. 719/- and the RoDTEP claim of Rs. 419/- as the goods have not been actually exported out of India.

(iii) I impose a penalty of Rs.10,000 (Rupees Ten Thousand only) on M/s. Chemetall India Private Ltd (IEC No. 0389002402) under Section 114(i) of the Customs Act, 1962 for attempting to export restricted goods without authorization.

(iv) I order to release the goods for Back-to-Town only after receipt of Fine/Penalty imposed on the Exporter and following the stipulated procedure for allowing goods to be taken Back-to-Town.

22. This order is issued without prejudice to any other action that may be taken against the noticee(s) or any other person(s) concerned with the said goods under the Customs Act, 1962, the Foreign Trade (Development & Regulation) Act, 1992, or any other law for the time being in force in India.


6/11/25

(Sachin S Pagare)

Deputy Commissioner of Customs
CEAC, NS-II, JNCH, Nhava Sheva.

To,

- (i) M/s. Chemetall India Private Ltd (IEC No. 0389002402),
Gat No. 569, Pune Nagar Road Village Koregaon Bhima,
Taluka Shirur Dist. Pune 412216
Maharashtra

Copy to:-

1. The Commissioner of Customs, NS-II, JNCH, Nhava Sheva,
2. The Deputy Commissioner, CAC, JNCH, Nhava Sheva,
3. The Deputy Commissioner, CRAC, JNCH, Nhava Sheva,
4. The Deputy Commissioner, CRRC, JNCH, Nhava Sheva,
5. Office copy.