



**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.	:	GEN/ADJ/ADC/994/2022-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/42/ADC/MK/2023-24
C. Passed by	:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order passed	:	19.05.2023
E. Date of order issued	:	22.05.2023
F. Show Cause Notice No. & Date	:	S/43-03/Inv-Stone Flower/SIIB-A/CHM/20-21 dated 17.11.2022
G. Noticee(s)/Party/ Importer	:	M/s. Shanuga Spices Pvt. Ltd, Bldg.-A/20, Aishwarya Aptt., 983/B, Shukrwar Peth, Pune, Maharashtra-411002 holding IEC No.3103011709.

DIN-20230571MO0000717261

1. यह अपील आदेश संबंधित 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), मुंद्रा
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, 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.

Sub.: SC No. S/43-03/Inv-Stone Flower/SIIB-A/CHM/20-21 dated 17.11.2022 issued to M/s. Shanuga Spices Pvt. Ltd, Bldg.-A/20, Aishwarya Aptt., 983/B, Shukrwar Peth, Pune, Maharashtra-411002 holding IEC No.3103011709.

BRIEF FACTS OF THE CASE

Acting on the specific information received from DRI, Jamnagar that some importers are importing "Stone Flower" under the customs heading 12119029, however Stone Flower should be classified under CTH 091099, 02 bills of entry bearing No. 6186092 dated 21.12.2019 and 6594451 dated 23.01.2020 filed by M/s Shanuga Spices Private Limited were taken for investigation by SIIB section, Mundra. The importers also availed the benefit of Notification No. 96/2008 (i) dated 13.08.2008 as amended and paid BCD @ 0%. The heading 12119029 refers to plants and parts of plants primarily used in perfumery, pharmacy or for insecticidal and fungicidal purposes, whereas the said product which is basically a spice and merits its classification rightly under CTH 091099 referring to residual category covering Ginger, Saffron, Turmeric, Bay leaves, curry and other spices.

1.2 The Bills of Entry No. 6186092 dated 21.12.19 and 6594451 dated 23.01.20 were filed by M/s. Shanuga Spices Pvt. Ltd. (IEC No.3103011709), Bldg. A/20, Aishwarya Aptt., 983/B, Shukrawar Peth, Pune-411002, Maharashtra (hereinafter called as 'the Importer') for the import and clearance of the goods declared as "Stone Flower" through Custom Broker M/s. Damji Dhirao & Sons, Gandhidham for clearance at Mundra Port. The details of the Bills of Entry are as under-

Sr. No.	B/E No.	Date	Importer M/s	Description	Declared value of the goods (in Rs.)
1	6186092	21.12.2019	Shanuga Spices Pvt. Ltd.	Stone Flower	1794091.49
2	6594451	23.01.2020	Shanuga Spices Pvt. Ltd.	Stone Flower	1624220.74

1.3 Shri. Shah Vastupal, Sales and Marketing Manager during his statement dated 28.03.2022 recorded under section 108 of Customs Act, 1962 wherein he stated that- they had imported items viz Stone Flower, cloves, mace, cubeb, cassia, caraway seeds, black pepper, watermelon seeds, Long Pepper; that the stone flower is mainly use for medicinal purpose by ayurvedic, homely and Unani medicine and also use as food ingredient in many cultures around the world; M/s J.K. Dry Fruits Pune, M/s Tisha Enterprises Mumbai, M/s Anil Grover & Co. Mumbai, M/s Kejal Enterprise Mumbai, M/s Vardhman Traders Mumbai, M/s S. S. Sales Corporation Pune and M/s Navin Pedhi, Pune are their main buyers of Stone Flower; he also submitted copy of GST Rates schedule discussed in the GST Council Meeting held on 18.05.2017 for the rate of duty @ 5% IGST refer Chapter No.12 Sr. No.10 - Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery in Pharmacy or for insecticidal, fungicidal or similar purpose, frozen or Dried, whether or not cut, crushed or powdered (1211). He also submitted letter dated 01.03.2021 issued by the DC Customs (Audit — Circle-C2), JNCH, wherein the department had accepted the classification of item Stone flower under CTH 12119029 and objected only for nonpayment of IGST @ 5%. He also submitted that while import made from Mundra Port under BE No.6186092 dated 21.12.2019 and BE No.6594451 dated 23.01.2020 they had paid applicable IGST duty.

1.4 During investigation it was concluded that the goods covered under the bills of entry No. 6186092 dated 21.12.2019 and BE No.6594451 dated 23.01.2020 i.e. "Stone Flower" (Parmotrema Perlatum) commonly known as black stone flower or kalpasi, though has some medicinal value, was primarily used as spice in India and further on scrutiny of the buyer details, it was noticed that all the buyers pertain to food industry. Further the importer failed to submit any concrete evidence to prove that the said goods sold to any pharma company/ medicine factory. Therefore, it appeared that "Stone Flower" not sold and used for any medicinal purpose and they had misclassified the same in guise of medicinal use.

1.5 Accordingly, a Show Cause Notice File No. S/43-03/Inv-Stone flower/SIIB-A/CHM/20-21 dated 17.11.2022 was issued whereby the importer M/s Shanuga Spices Pvt. Ltd, Bldg. A/20, Aiswarya Aptt, 983/B, Shukrawar Peth, Pune-411002, Maharashtra was called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra having office at 1st floor Custom House, PUB, Mundra, as to why:

- i. The benefit of Exemption Notification No.96/2008 (i) dated 13.08.2008 as amended should not be denied.
- ii. The impugned goods should not be re-classified under CTH 09109990 instead of 12119029 as claimed under impugned Bills of entry.
- iii. The goods valued to Rs.34,18,312/- covered under impugned bills of entry should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.
- iv. Differential duty of Rs. 10,06,778/- (Rupees Ten Lakh Six Thousand Seven Hundred Seventy-Eight) on the aforesaid imported goods should not be demanded, confirmed and recovered from them under Section 28(4) of the Customs Act, 1962.
- v. Interest at appropriate rates as provided under Section 28AA of the Customs Act, 1962 should not be levied and recovered from them.
- vi. Penalty should not be imposed on the importer under Section 114A of the Customs Act, 1962.

1.6 M/s Damji Dhirao & Sons was also called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra having office situated at 1st Floor, Custom House, PUB, Mundra, as to why;

(i) Penalty should not be imposed on the Customs Broker under Section 117 of the Customs Act, 1962.

Records of Personal Hearing

2.0 Following the principal of natural justice, an opportunity of personal hearing in the subject case was granted on dated 20.04.2023. Shri. Bharat Shah, Director, M/s Shanuga Spices appeared for the personal hearing and stated that the goods under import i.e. stone flower was rightly classified by them under heading 12119029 and the classification suggested by the department under HS code 09109990 is not correct. He further reiterated their earlier submissions dated 08.04.2023 and requested to drop the show cause notice.

Defense Submission of Importer

3 . 0 The Noticee vide their letter dated 08.04.2023 submitted to the department wherein the noticee made submissions as under –

3.1 Stone flower having scientific name Passiflora Foetida and HS Code 12119029 also has Medicinal properties.

The both said consignments of Stone flower having scientific name Passiflora Foetida HS Code 12119029 mentioned on the Phytosanitary Certificate issued by Niger government authority, in India it has some of the other names for it including "Shaileyam" in Sanskrit, "Kalpasi" in Tamil, "Dagar da Phool" in Punjabi, "Dagad phool" in Marathi, "Raathi Pootha (Banda puvvu)" in Telugu "Kallu hoovu" in Kannada and "Patthar ke phool" in Hindi.

As per extract from The Indian Materia Medica Vol 1, Pg 922, "Stone Flower are species of the Lichenes Order belonging to Family Parmeliaceae found on trees, old plants, walls, and on rocks of the Himalayas, some parts of Tamil Nadu, Punjab, Persia, etc. Stone Flower has a strong earthy aroma and dry texture and has medicinal properties. As a liniment, it is applied to the head in cases of headaches. The lichen is also used as an incense specially to relieve headaches and also in the preparation of a masala used for washing the hair. Its powder is applied to promote the healing of wounds

Some of its common health benefits are as follows:

1. A good pain reliever and helps heal wounds.
2. It helps treat skin problems and reduces inflammation.
3. It has antibacterial activity and is effective against protozoans.
4. It improves digestion and helps suppress respiratory disorders.
5. It tones up the urinary tract and helps maintain body temperature.

Therefore, the stone flower is used mainly for its medicinal properties and in preparation for homely Ayurvedic and Unani medicines. In addition to the above, the stone flower is also used as food by many cultures around the world.

3.2 Goods Imported under the India's Duty-Free Tariff Preference for Least Developed Countries (LDC) scheme;

Under the Duty Free Tariff Preference (DFTP) Scheme for LDCs, India extends tariff preferences to the Least Developed Countries. Under the DFTP scheme, 98.2% of product categories originating from LDCs are offered duty free and preferential treatment, As of October, 2017; 49 LDCs have been notified as beneficiaries to the scheme including the Niger, importer can avail the benefit of notification No.96/2008 (1) dated 13.08.2008 as amended issued for the least developed countries (LDC).

The goods have been imported from Niger and the same has been added to the respective list vide Notification no.68/2017-Customs dated 27.07.2017. As per the said notification duty on goods imported from

LDCs' are leviable @ 0%.

It is also submitted that both imported consignments of 'Stone Flower' originated from African country Niger which has been included in the list of Least Developed Countries also we have provided Certificate of Origin cum Least Developed Countries (LDC) Certificates for both said consignments under the duty-free tariff preference scheme issued by Niger government authority and they have followed all the guidelines such as eligibility, rules of origin, product standards etc. product

3.3 JNPT Nhava Sheva Customs Approved our "Stone Flower" Shipments rightly classified under CTH 12119029.

The Noticee also submitted copy of bills of entry No. 809257/26.09.2018, 8977242/23.11.2018, 9496650/02.01.2019, 9624090/12.01.2019 and 9878528/ 31.01.2019 filed at JNPT Nhava Sheva Port, wherein the "Stone Flower" was classified under HS Code 12119029 by availing the benefit of Sr. No. 88 of Notification No. 02/2017 Integrated Tax (Rate) dated 28.06.2017. The notice submitted that for the above mentioned bills of entry, JNCH issued Show Cause Notice wherein it was alleged that the goods covered under above mentioned bills of entry are not eligible for the benefit of Sr. No. 88 of Notification No. 02/2017 Integrated Tax (Rate) dated 28.06.2017 and attract IGST @5% under Sr. No.73 of Schedule-1 of IGST Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017.

The importer submitted the classification of Stone Flower under HS Code 12119029 was approved by JNCH officers and for the Bills of Entry Nos. 6186092 dated 21.12.2019 and 6594451 dated 23.01.2020 they have already paid IGST @ 5% under Sr. No.73 of Schedule-1 of IGST Notification No.01/2017 Integrated Tax (Rate) dated 28.06.2017.

3.4 No misdeclaration as goods duly cleared after assessment and examination by Proper Officer:

The Noticee also submitted that in the abovementioned 2 Bills of Entry, they declared the goods as 'Stone Flower' as per the import invoice, packing list and Country of Origin cum Least Developed Countries (LDC) Certificates. The goods and Documents were assessed and physically examined by the proper officers of the Customs Department. During physical examination of the goods the representative sealed samples were also drawn by the concerned officers. After verifying all the parameters of the declared goods, the department has permitted us to get the goods cleared for home consumption.

3.5 Onus of the classification is on the department:

It is also submitted that they declared the description as per the import documents like invoice, packing list, Country of Origin cum Least Developed Countries (LDC) Certificates etc. and the goods were assessed by the proper officer of the Customs and examined by the then Examining Officer of Customs and after satisfying all the parameters the proper officer has permitted to clear the goods for home consumption by giving out of charge order. Any kind of mis-declaration or mis-classification at the time

I/1195929/2023

of assessment or examination or importation was not arisen by the department. If there was any kind of misdeclaration or misclassification with the goods it would have been raised by the department at the time of examination or assessment or clearance for import. After completion of import, any question of mis-declaration or mis-classification of the same goods should not arise by the department. It is purely a hypothetical allegation by the department without any evidence. The department has shown the reason for making allegation of mis-declaration of classification. But, it cannot be the valid reason for making allegation on the importer because the goods were earlier assessed and examined by the officers of the department after satisfying with the declaration made by the importer the goods were given out of charge by the officers of the department and allowed to be imported. Moreover, the onus of proper classification of the goods lies with the department.

3.6 No malafide intention:

It is submitted that, in the said 2 Bills of Entry, they declared the goods as 'Stone Flower' with CTH 12119029 as per the import invoice, packing list and Country of Origin cum Least Developed Countries (LDC) certificates. The goods were assessed and physically examined by the proper officers of the Customs Department. During physical examination of the goods the representative sealed samples were also drawn by the then concerned officers. After verifying all the parameters of the declared goods the department has permitted us to get the goods cleared for home consumption. No objection was raised by any proper officer of the department. The whole event itself shows that there is no malafide intention to evade any duty incidence. Hence the allegations made against them are not proper.

4. Submission of CB - M/s Damji Dhirao & Sons vide their letter dated 12.05.2023 stated that the subject matter is related to the classification of the goods under import and the classification is decided by the importer/client. Further M/s Damji Dhirao & Sons also stated that they don't want any personal hearing in the subject matter and requested to drop the Show Cause Notice proceedings against their firm.

Discussions and Findings

5.1 I have gone through the case records, Show Cause Notice, RUDS, as well as the written and verbal submissions made by the importer and the other Noticee. I find that the importer along with Customs Broker (CB), M/s. Damji Dhirao & Sons, has been issued a Show Cause Notice. Taking note on the submissions given by the Noticee, I now proceed to decide the case of the subject SCN.

I find that the M/s Shanuga Spices Pvt. Ltd filed the bills of entry No. 6186092 dated 21.12.2019 and 6594451 dated 23.01.2020 for the import and clearance of the goods declared as "Stone Flower" under HS Code 12109029 and paid BCD @ 0 % by availing the benefit of Notification No. 95/2008 (I) dated 13.08.2008 as amended issued for least development countries (LDC). The goods were imported from Niger and the same has been in the respective list of LDC countries vide Notification No.

68/2017- Customs dated 27.07.2017.

The heading 12119029 refer to plants and parts of plants primarily used in perfumery, pharmacy or for insecticidal and fungicidal purposes, whereas it was alleged in the SCN that the goods i.e. Stone Flower, which is basically a spice and merits its classification rightly under CTH 09109990.

5.2 I find that the following issues are involved in the subject Show Cause Notice, which are required to be decided-

- i. Whether the benefit of Exemption Notification No.96/2008 (i) dated 13.08.2008 as amended is liable for rejection.
- ii. Whether the classification under Custom Tariff Item No. 12119029 is liable for rejection and classification under Custom tariff heading 091099 is required to be made on re-assessment.
- iii. Whether the goods covered under Bill of Entry No. 6186092 dated 21.12.2019 and 6594451 dated 23.01.2020 having assessable value Rs.34,18,312/- is liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- iv. Whether the Differential duty of Rs. 10,06,778/- (Rupees Ten Lakh Six Thousand Seven Hundred Seventy-Eight) on the aforesaid imported goods is required to be demanded, confirmed and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest at appropriate rate under Section 28AA ibid.
- v. Whether the importer M/s Shanuga Spices Private Limited is liable for penalty under section 114A of the Customs Act, 1962.
- vi. Whether the CB M/s Damji Dhirao & Sons is liable for penalty under section 114A of the Customs Act, 1962.

5.3 The foremost issue before me to decide in this case is as to whether the goods imported by the Noticee by declaring the same as "Stone Flower" are classifiable under tariff item 12119029 or under tariff item 09109990 of Customs Tariff Act, 1975 as alleged by the department in the Show Cause Notice. The heading 12119029 refers to plants and parts of plants primarily used in perfumery, pharmacy or for insecticidal and fungicidal purposes and CTH 091099 referring to residual category covering Ginger, Saffron, Turmeric, Bay leaves, curry and other spices.

In this connection, firstly have gone through the concerned statutory provisions as provided under chapter notes as well as HSN notes of chapter 09 and 12 reads as under-

Chapter 9 – Coffee, Tea, Mate and Spices

0910 – Ginger, Saffron, Turmeric (Curuma), Thyme, Bay leaves, Curry and Other Spices.

091099 – other

09109990 --- other.

Chapter 12 – Oil seeds and Oleaginous Fruits; Miscellaneous Grains, Seeds

and Fruits; industrial or medicinal Plants; Straw and Fodder.

1211 – Plants and parts of plants (Including seeds or fruits), of a kind used primarily in perfumery, pharmacy or for insecticidal and fungicidal purposes, fresh or chilled whether or not cut, crushed or powdered.

121190 --- other

12119029 ---- other.

5.3.1 The department placed reliance on the India context of the Stone Flower reads as below –

(A). *Didymocarpus Pedicellatus* - Commonly called as Pattharphori, Stone Flower, Charela, Kum, Pasanbheda, Shantapushpl, Shila Pushp, is a rocky herb found in the Himalayan region.

Usage: This species has little aroma in its underground parts and collected commercially for this. The flowers of this plant are used in Ayurvedic medicine to treat urinary tract infection.

(B) *Passiflora Foetida*: Commonly called as wild maracuja, bush passion fruit, mary- mary, wild water lemon, stinking passionflower, stoneflower, love-in-a-mist or running pop, is a species of passion flower out of 550 species of *Passiflora* that is native to the southwestern United States, Mexico, the Caribbean, Central America, Africa and much of South America. It has been introduced to tropical regions around the world, such as Southeast Asia, South Asia, Hawaii, and Maldives. It is a creeping vine, like other members of the genus, and yields an edible fruit. The specific epithet, *foetida*, means "stinking" in Latin and refers to the strong aroma emitted by damaged foliage.

Usage: The fruits are roughly the size of a ping pong ball or kumquat and contain a bluish-white pulp that is mildly sweet and delicately flavored. In Philippines, the fruit of *Passiflora foetida* are known colloquially as maryo-marya (Little Mary), kurombot and santo papa (due to its resemblance to the Pope's mitre).

Young leaves and plant tips are also edible. Dry leaves are used in tea in Vietnamese folk medicine to relieve sleeping problems, as well as treatment for itching and coughs.

(C) *Parmotrema Perlatum*: This is the species in dispute here. While the above two species refer to actual flowering plants, this species is a lichen (a type of fungus). Commonly known as black stone flower, it is a species of edible lichen flora that grows on trees, rocks and stones. Black Stone Flower or Dagad Phool is a soft brown and black coloured lichen and has a strong earthy aroma and a very dry, light fluffy texture and feel to it. The common names of this species are:

Latin: *Parmotrema perlatum*

English: Black stone flower, Nigerian Stone flower, Kalpasi

Sanskrit: Shalleyam

Tamil: Kalpasi, Marapasi Malayalam: Adal Poove, Celeyam, Kalpuvu

Kannada: Kalahu, Kaluhuva

Marathi: Dagad Phool Hindi: Pathar ka phool, Dagad Phool Urdu: Riham

karmanl.

Primary usage: Parmotrma perlatum or Black Stone Flower has an earthy flavour and used primarily as a spice in Indian cuisinesto enhance the flavor and taste of food. Its primary uses are as under:

It is used widely in Chettinad cuisine (Tamil Nadu and to some extent in the Hyderabadi and Marathi cuisines.

Due to its mild aromatic flavour, Kalpasi is used to add aroma to soup preparations and also as a soup thickener.

It is an essential ingredient in Goda masala or kala masala. It gives the signature blackcolor to these masalas.

It is often used in meat dishes.

Kalpasi is also used as food by many cultures around the world.

Medicinal value:

Much like Chinese medicinal cuisine, Indian cuisines are very much medicinal, from the Ayurvedic perspective. Stone flower or Kapalsi has the following medicinal values: A good pain reliever, Kalpasi helps heal wounds.

It helps treat skin problems and reduces Inflammation.

It has antibacterial activity and is effective against protozoans.

It improves digestion and helps suppress respiratory disorders.

It tones up urinary tract and helps maintain body temperature.

Further reference was also taken from websites i.e. Indiamart, 1mg and amazon etc. by the department.

5.3.2 In reply, the importer submitted that as per extract from The Indian Materia Medica Vol 1, Pg 922, "Stone Flower are species of the Lichenes Order belonging to Family Parmeliaceae found on trees, old plants, walls, and on rocks of the Himalayas, some parts of Tamil Nadu, Punjab, Persia, etc. Stone Flower has a strong earthy aroma and dry texture and has medicinal properties.

As a liniment, it is applied to the head in cases of headaches. The lichen is also used as an incense specially to relieve headaches and also in the preparation of a masala used for washing the hair. Its powder is applied to promote the healing of wounds

Some of its common health benefits are as follows:

1. A good pain reliever and helps heal wounds.
2. It helps treat skin problems and reduces inflammation.
3. It has antibacterial activity and is effective against protozoans.
4. It improves digestion and helps suppress respiratory disorders.
5. It tones up the urinary tract and helps maintain body temperature.

5.3.3 On perusal of the submission of department and the importer, I find that Stone Flower can be used as spice as well as aromatic or medical

substances. On perusal of the exclusions mentioned in Explanatory Notes of Chapter 9, reads as below-

Clause (d) of the exclusions under Explanatory notes of the Chapter 9 (Coffee, Tea, Mate and Spices), excludes the following from the said chapter –

(d) Certain fruits, seeds and parts of plants which, although they can be used as spices, are more often employed in perfumery or in medicine (heading 12.11) (eg. Cassia pods, rosemary, wild marjoram, basil, borage, hyssop, all spices of mint, rue and sage).

The said clause, excludes the products which are more often in perfumery or in medicine. Hence, from the above discussions, I find that the disputed product i.e. Stone Flower, although have perfumery, medical or aromatic uses, but primarily used as spice. Hence, the Stone Flower will not be covered by the said exclusion clause and should be classifiable under HS Code 09109990.

5.4 The Show Cause Notice proposed that the benefit of exemption under Notification No. 96/2008 (i) dated 13.08.2008 availed by the Importer by paying basic customs duty @ 0 % is not available on the impugned goods.

In view of above I find that the Notification No. 96/2008 (i) dated 13.08.2008 as amended covers goods originating from Least Developed Countries (LDC). The goods have been imported from Niger and the same has been added to the respective list vide Notification no.68/2017-Customs dated 27.07.2017.

Relevant portion of Notification 68/2017-Customs dated 27.07.2017 reproduced below-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3,
SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification
No. 68/2017-Customs

New Delhi, 27thJuly, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India, in the Ministry of Finance (Department of Revenue), No. 96/2008-Customs, dated the 13th August, 2008, published vide number G.S.R. 590 (E), dated the 13th August, 2008, namely:-

In the said notification, in the Schedule, after serial number 34 and the entries relating thereto, the following serial numbers and entries shall be added, namely:-

S. No.	Name of Country
*35	Republic of Niger
36	Republic of Guinea".

[F. No. 354/189/2005-TRU (Vol. II)]

(Mohit Tewari)
Under Secretary to the Government of India

Note: The principal notification No. 96/2008-Customs, dated the 13th August, 2008 was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (i) vide number G.S.R. 590(E), dated the 13th August, 2008 and was last amended by notification No. 46/2016-Customs, dated the 23rd August, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 813(E), dated the 23rd August, 2016.

I find that there is not dispute regarding the country of origin of goods and as the goods are of Niger origin, I find that goods under import i.e. Stone Flower, is eligible for the benefit of Notification No. 96/2008 (i) dated 13.08.2008 but as the goods have merit classification under HS Code 091099, **hence, BCD @ 15 % is applicable.**

5.5 I find that the importer filed the bill of entry with wrong particulars and failed to discharge their statutory obligation and not complied with the obligation cast upon them under the provisions of Section 17 hence making the goods liable for confiscation under section 111 (m) of Customs Act, 1962. However, as the goods are not physically available for confiscation, I refrain from imposing any redemption fine.

5.6 Under Section 17 of the Customs Act, 1962 the importer has been given authority to self-assess the imported goods by presenting a Bill of Entry and making or subscribing to a declaration as regards the truth of its contents under Section 46 ibid. Contrary to this, the importer failed to

discharge their statutory obligation and not complied with the obligation cast upon them under the provisions of Section 17 which resulted in short payment of duty of Rs. 5,65,223/-.

Sr. No	Assessable Value of goods (in Rs.)	Duty paid (BCD 0%, SWS 0% and IGST 5%)	Duty payable (BCD 15%, SWS 10% and IGST 5%)	Difference (in Rs.)
1	34,18,312/-	1,70,915	7,36,138/-	5,65,223/-

Therefore, I find that the same is to be demanded and recovered from them under Section 28(4) of the Customs Act and the importer is also liable to pay interest at appropriate rate on the said amount of Rs. 5,65,223/- under the provisions of Section 28AA of the Customs Act, 1962

5.7 I also find that the importer has suppressed the actual use of the goods and wrongly declared both the CTH and the description of the goods as discussed in the foregoing paras. I also find that the duty not paid/short paid by the importer should be recovered/demanded under section 28 (4) of Customs Act alongwith applicable interest under section 28AA of Customs Act, 1962. Also for their various acts of omission and commission the importer has rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

5.8 I now turn to the last issue, namely, the issue of liability of penalty on M/s Damji Dhirao & Sons. The Show Cause Notice seeks to impose a penalty under Section 117 of the Customs Act, 1962 on the them. In this connection, I have gone through the provisions of Section 117 of Customs Act, 1962 which reads as under:

Section 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

5.9 In this context, the CB M/s Damji Dhirao & Sons vide their letter dated 12.05.2023 stated that they filed the Bills of Entry as per the documents provided by the importer. There is nothing on record to show that any act or omission on his part has rendered the goods liable for confiscation of goods under Section 111.

There is nothing on record to show that the CB had knowledge of the true nature of the goods or that the CB had any interest in the mis-declaration. The CB is expected to discharge his obligations under CBLR, 2018 which does not include having knowledge of what goods were actually imported or examining the imported goods before filing the Bill of Entry.

As discussed, I am not imposing any penalty on CB M/s Damji Dhirao & Sons under Section 117 of Customs Act, 1962.

6.0 In view of the forgoing discussions and findings, I pass the following order -

- i. I reject the classification of goods under import i.e. Stone Flower under HS Code 12119029 and order to reclassify the same under HS Code 09109990 and order to re-assess the bills of entry.
- ii. I order that the benefit of Exemption Notification No.96/2008 (i) dated 13.08.2008 as amended is applicable only for the HS Code 09109990.
- iii. I order the confiscation of goods valued to Rs. 34,18,312/- covered under impugned bills of entry under the provisions of Section 111(m) of the Customs Act, 1962, however as the goods are not physically available for confiscation, I refrain for imposing redemption fine.
- iv. I confirm and demand the duty demand of Rs. 5,65,223 /-(Rupees Five Lakh Sixty-Five Thousand Two Hundred Twenty-Three only under Section 28(4) of the Customs Act, 1962 and alongwith applicable Interest under Section 28AA of the Customs Act, 1962.
- v. I impose a penalty of Rs. 5,65,223 /-(Rupees Five Lakh Sixty-Five Thousand Two Hundred Twenty-Three only under Section 114A of the Customs Act, 1962 on the importer M/s. Shanuga Spices Pvt. Ltd. Further, in terms of 1st proviso to Section 114A of the Customs Act, 1962, where such duty or interest, as the case may be, as determined under sub- section (8) of section 28, and the interest payable thereon under section 28AA. is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined.
- vi. I do not impose any penalty on the CB M/s Damji Dhirao & Sons under section 117 of Customs Act.

7. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by

Mukesh Kumari

Date: 19-05-2023 14:02:40

Additional Commissioner of Custom

Customs House, Mundra

I/1195929/2023

To

M/s. Shanuga Spices Pvt. Ltd. (IEC No.3103011709),
Bldg. A/20, Aishwarya Aptt., 983/B, Shukrawar Peth,
Pune-411002

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 (Group-I), Custom House, Mundra.
4. The Deputy/Assistant Commissioner (SIIB), Custom House, Mundra.
5. M/s Damji Dhirao & Sons (CB).
6. Guard File.