

		<p align="center">OFFICE OF THE COMMISSIONER</p> <p align="center">CUSTOM HOUSE, KANDLA</p> <p align="center">NEAR BALAJI TEMPLE, NEW KANDLA</p> <p align="center">Phone : 02836-271468/469 Fax: 02836-271467</p>
DIN- 20240771ML0000444C7A		
A	File No.	GEN/ADJ/ADC/1356/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/15/2024-25
C	Passed by	DevPrakashBamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	26.07.2024
E	Date of Issue	26.07.2024
F	SCN NO. & Date	Waiver of Show cause notice
G	Noticee / Party / Importer / Exporter	M/s Bulzei Agro Pvt. Ltd.

1. यह मूल 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 मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्कअधिनियम 1962 की धारा 128A 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:

“ सीमाशुल्कआयुक्त (अपील),

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

“THE COMMISSIONER OF CUSTOMS (APPEALS),

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”**

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 be 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 सं०-6 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 शुल्कया 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 facts of the case:-

M/s Bulzai Agro Pvt. Ltd., Godown No. 27 and 29, Mithi Rohar, Gandhidham, Kachchh, Gujarat having IEC-AAJCB4457E were engaged in export of edible items such as rice, groundnut etc. from Kandla Port.

2. Further, a letter F.No. S/01-01/Misc./DE/2020-21 dtd. 10.11.2022 was received from Supdt. (DE), Custom House, Kandla wherein it has been informed that during examination of goods pertaining to Shipping Bill no. 5341266 dtd. 09.11.2022, filed by the exporter M/s Bulzai Agro Pvt. Ltd., having goods description as Groundnut seeds with CTH 12024210, in one container no. MISU2816434, the goods were found to be groundnut whereas in second container no. SLLU2816318, the goods were found to be long grain rice.

3. On the basis of that, the cargo pertaining to SB No. 5341266 dated 09.11.2022 alongwith other live cargo of the exporter pertaining Shipping Bill No. 5340455 dated 09-11-2022, were put on hold for examination by SIIB, Customs House, Kandla.

4. Thereafter, the examination of the cargo in respect of both the Shipping Bills No. 5341266 & 5340455, both dated 09-11-2022 was conducted at M/s. A V Joshi & Co. CFS, Gandhidham under panchnama dated 13.11.2022. During the examination conducted under panchmana dated 13.11.2022, it was observed that -

- Exporter – Bulzai Agro Pvt. Ltd., Gandhidham, through their CHA – M/s. G.S. Infraport Pvt Ltd, filed **S/B No. 5340455 dtd. 09-11-2022** for export of 1121 Sella **Rice Sortex Clean** (CTH-10063020), total 432000 Kgs. (10*4 Kg in BOPP Bag further packed in PP Bags) in **18 Containers**. Out of 18 Containers, **7 containers were found to be stuffed with Groundnut, and remaining 11 containers with 1121 Sella Rice Sortex Clean** as declared in Shipping Bill.
- Exporter – Bulzai Agro Pvt. Ltd., Gandhidham, through their CHA – M/s. G.S. Infraport Pvt Ltd, filed **S/B No. 5341266 dtd. 09-11-2022** for export of Groundnut Seeds (CTH-12024210), total 190000 Kgs. (50Kg in printed Jute Bags) in **10 containers**. Out of 10 Containers, **3 containers were found to be stuffed with Groundnut as declared, while remaining 7 containers were found to contain 1121 Sella Rice Sortex Clean** as declared in Shipping Bill.

5. During the scrutiny of the documents submitted by the exporter at the time of filing of Shipping Bill, it was observed that the exporter had self sealing permission and self sealing of the containers of both the aforesaid Shipping Bills was done by them, and they have declared the same in separate Annexure C-1/ Examination Report for self sealed container as per CBEC Circular No. 26/2017 dated 01.07.2017 for both the Shipping Bills. *On going through the Examination Reports, it is observed that 07 container numbers of both the Shipping Bills have been interchanged with each other.*

6. As per notification no. 49/2022-Customs dtd. 08.09.2022, an export duty of 20% has been levied on semi-milled or wholly milled rice, whether or not polished or glazed (other than Parboiled rice and Basmati Rice) falling under CTH-10063090. Therefore, to ascertain the nature of the goods to be exported, samples of rice were drawn from the cargo of both the shipping bills under Panchnama dated 15.11.2022 and were sent to CRCL, Kandla vide Test Memo No. SIIB/274/2022-23 (for cargo from SB No. 5340455 dated 09.11.2022) & SIIB/275/2022-23 (for cargo from SB No. 5341266 dated 09.11.2022), both dated 17.11.2022 for testing purpose to rule out the possibility of export of rice on which export duty has been levied in the guise of parboiled and basmati rice.

7. Further, report in respect of both the samples was received from CRCL, Kandla on 23.11.2022. In both the cases, CRCL, Kandla vide test reports both dated 23.11.2022, has reported as under-

"The sample as received is in the form of pale yellowish translucent rice grains of irregular sizes. Based on the physical appearance, forms and analytical findings, it appears to be Basamati Rice (Parboiled, Milled). However, other tests including microbiological test could not be ascertained."

8. Further, the exporter has submitted a request letter dated 29.11.2022 for allowing export of both the above mentioned shipments. Vide the said letter, exporter has submitted that-

- 10 containers of groundnut/peanuts and 18 containers of rice were stuffed and they have filed the subject 02 Shipping Bills accordingly. Details of Shipping Bills are mentioned below-

- Shipping Bill No. 5341266 dated 09.11.2022- Groundnuts
- Shipping Bill No. 5340455 dated 09.11.2022- Rice in bags
- Due to clerical error, container numbers have been interchanged during Annexure preparation.
- Containers have been shifted to A.V.Joshi CFS and examined under officer's supervision and samples have been drawn from the containers.
- They also requested to allow its shipment after submission of bond.
- If sample's report varies from declared cargo, they shall pay duty as applicable & abide themselves under the provisions of Customs Act, 1962.

9. Meanwhile, the provisional export of the cargo pertaining to both the Shipping Bills was allowed by the competent authority on 29.11.2022. Accordingly, a letter dated 30.11.2022 was issued to the Assistant Commissioner (Export) requesting to allow the provisional export in both the Shipping Bills with necessary safeguards as applicable as Circular No. 01/2011-Customs dated 04.01.2011 and Board's Instruction No. 29/2022-Customs dated 28.10.2022.

10. Further, a statement of Shri Ashok Gujjar, Director of M/s. G.S. Infraport Pvt. Ltd. (CHA of M/s Bulzai Agro Pvt. Ltd.) was recorded on 30.11.2022, wherein he inter-alia stated that-

- M/s. G.S. Infraport Pvt. Ltd.(CHA) is authorized by the exporter M/s. Bulzai Agro Private Limited to file Shipping Bills on their behalf, this mistake occurred due to clerical error during the preparation of annexure of S/B No. 5340455 dtd. 09-11-2022 & S/B No. 5341266 dtd. 09-11-2022;
- that the exporter details, M/s. Bulzai Agro Private Limited and consignee details, M/s. Aytanish Pakash Co. in both the shipping bills is same;
- the mis-declaration in both the shipping bills is due to the clerical error and it was a bonafide mistake.

11. As all the tests could not be ascertained in the report received from CRCL, Kandla, therefore, the remnant samples were sent to CRCL, New Delhi for retesting purpose. The test report in respect of remnant samples pertaining to Shipping Bills No. 5341266 dtd. 09.11.2022 & 5340455 dtd. 09.11.2022 of the exporter M/s. Bulzai Agro Pvt. Ltd was received from Joint Director (NFSG), CRCL, New Delhi vide their letter F.No. 26-Cus/C-71/2022-23/2023 dtd. 31.01.2023. The re-test report is as below:

"Each of the two samples is in the form of white translucent rice grains. Each has following constants:

S.No.	Test Parameter	Sella Rice Sortex clean,CLR-144 SB. NO- 5340455 marked as A1	Groundnut seeds,CLR-145 SB No. 5341266 marked as B1
1	Moisture (% by mass)	11.52	11.51
2	Ash Content (% by mass)	0.44	0.51
3.	Broken Grains (% by mass)	2.18	1.5
4.	Foreign Matter (% by mass)	Nil	Nil
5.	Damaged Grains (% by mass)	Nil	Nil
6.	Weevilled Grains (% by mass)	Nil	Nil
7.	Chalky Grains (% by mass)	Nil	Nil

8.	<i>Average Length (in mm)</i>	<i>8.70</i>	<i>8.60</i>
9.	<i>Average Width (in mm)</i>	<i>1.58</i>	<i>1.62</i>
10.	<i>Length/Width Ratio</i>	<i>5.69</i>	<i>5.24</i>
11.	<i>Elongation Ratio</i>	<i>1.83</i>	<i>1.85</i>
12.	<i>Equilibrium Moisture content (% by mass)</i>	<i>55.76</i>	<i>56.95</i>
13.	<i>Alkali Degradation (1.7% KOH solution for 24 hours)</i>	<i>Grain dispersed</i>	<i>Grain dispersed</i>

On the basis of above tested parameters each of the two samples is milled parboiled Basmati Rice."

Therefore, as per the above test report and in terms of aforementioned Notification No. 49/2022-Customs dated 08.09.2022, no export duty liability arises in case of the instant Shipping Bills.

12. As discussed above, since the goods declared in both the consignments under S/B No. 5340455 and 5341266 both dated 09-11-2022 are different from the goods actually found during examination, which makes the goods liable for confiscation under Section 113 (i) of the Customs Act, 1962. The exporter had themselves sealed the containers and attempted to export the goods improperly by making incorrect declaration in the Annexure C-1/ Examination Reports for self sealed containers, Shipping Bills and other supporting documents submitted by them, thus making them liable for penalty under Section 114 and 114AA of the Customs Act, 1962.

13. Further, in the instant case, the exporter has submitted a letter dated 10.07.2024 wherein they have informed that their drawback and RODTEP incentives are held up and also requested for waiver of SCN and for spot adjudication in the matter.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING:-

14. The noticee has requested for waiver of show cause notice. As per Section 124 of the Customs Act, 1962, the show cause notice can be waived at the request of the noticee. Therefore, considering the request letter dated 10.07.2024 of the noticee, the matter is taken up for adjudication.

DISCUSSION AND FINDINGS:-

15. I have carefully gone through the Investigation report, waiver request letter and all the submissions placed on record.

16. I find that the exporter M/s. Bulzai Agro Pvt. Ltd., Gandhidham, through their CHA - M/s. G.S. Infraport Pvt Ltd has filed two Shipping Bills viz. 5341266 & 5340455 both dated 09-11-2022. On examination of the cargo of the said shipping Bills, the following observations are made:-

- **S/B No. 5340455 dtd. 09-11-2022** for export of 1121 Sella **Rice** Sortex Clean (CTH-10063020), total 432000 Kgs. (10*4 Kg in BOPP Bag further packed in PP Bags) in **18 Containers**.

- Out of 18 Containers, **7 containers were found to be stuffed with Groundnut, and remaining 11 containers with 1121 Sella Rice Sortex Clean** as declared in Shipping Bill.
- **S/B No. 5341266 dtd. 09-11-2022** for export of Groundnut Seeds (CTH-12024210), total 190000 Kgs. (50Kg in printed Jute Bags) in **10 containers**.
 - Out of 10 Containers, **3 containers were found to be stuffed with Groundnut as declared, while remaining 7 containers were found to contain 1121 Sella Rice Sortex Clean** as declared in Shipping Bill.

17. I further find that the samples of Rice were sent to CRCL, Kandla on 23.11.2022. The CRCL, Kandla vide its test reports both dated 23.11.2022, has reported as under-

“The sample as received is in the form of pale yellowish translucent rice grains of irregular sizes. Based on the physical appearance, forms and analytical findings, it appears to be Basamati Rice (Parboiled, Milled). However, other tests including microbiological test could not be ascertained.”

18. Further, the test report in respect of remnant samples pertaining to Shipping Bills No. 5341266 dtd. 09.11.2022 & 5340455 dtd. 09.11.2022 of the exporter M/s. Bulzai Agro Pvt. Ltd was received from Joint Director (NFSG), CRCL, New Delhi vide their letter F.No. 26-Cus/C-71/2022-23/2023 dtd. 31.01.2023. The re-test report is as below:

“Each of the two samples is in the form of white translucent rice grains. Each has following constants:

S.No.	Test Parameter	Sella Rice Sortex clean,CLR-144 SB. NO- 5340455 marked as A1	Groundnut seeds,CLR-145 SB No. 5341266 marked as B1
1	Moisture (% by mass)	11.52	11.51
2	Ash Content (% by mass)	0.44	0.51
3.	Broken Grains (% by mass)	2.18	1.5
4.	Foreign Matter (% by mass)	Nil	Nil
5.	Damaged Grains (% by mass)	Nil	Nil
6.	Weevilled Grains (% by mass)	Nil	Nil
7.	Chalky Grains (% by mass)	Nil	Nil
8.	Average Length (in mm)	8.70	8.60
9.	Average Width (in mm)	1.58	1.62
10.	Length/Width Ratio	5.69	5.24
11.	Elongation Ratio	1.83	1.85
12.	Equilibrium Moisture content (% by mass)	55.76	56.95
13.	Alkali Degradation (1.7% KOH solution for 24 hours)	Grain dispersed	Grain dispersed

On the basis of above tested parameters each of the two samples is milled parboiled Basmati Rice.”

18. On the basis of the test report and in terms of aforementioned Notification No. 49/2022-Customs dated 08.09.2022, it is seen that no export duty liability arises in case of the instant Shipping Bills.

19. On going through the statements recorded under Section 108 of the Customs Act, 1962, I find that due to clerical error, container numbers have been interchanged during Annexure preparation and the same has been erroneously reflected in their shipping Bills.

20. It is evident that the goods declared in both the consignments under S/B No. 5340455 and 5341266 both dated 09-11-2022 were different from the goods actually found during examination. Therefore, the goods are liable for confiscation under Section 113 (i) of the Customs Act, 1962. The relevant extracts of the Section 113(i) of the Customs Act, 1962 is reproduced as under:-

113. Confiscation of goods attempted to be improperly exported, etc.

- The following export goods shall be liable to confiscation:-

(i) [any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;]

21. It is pertinent to note that the exporter had themselves sealed the containers and attempted to export the goods improperly by making incorrect declaration in the Annexure C-1/ Examination Reports for self sealed containers, Shipping Bills and other supporting documents submitted by them, which has rendered them liable for penalty under Section 114 and 114AA of the Customs Act, 1962.

22. I further find that the exporter had no malafide intention to mis-declare the export goods in order to evade the duties of customs. Further the goods were also not prohibited/restricted in nature. It was only a clerical error at their end. However, it is a settled law that redemption fine, under Section 125 of the Customs Act, 1962, is quintessential for the goods which have been held liable for confiscation.

23. In view of the above discussion and findings and keeping in mind the nature of the offence, I will be taking a lenient view while imposing redemption fine and penalties. Further there is also no revenue implication in this matter.

24. Therefore, In view of the above, I hereby pass the following order:-

(i) I hold the subject goods, exported vide SB No. 5340455 and 5341266 both dated 09-11-2022, liable for confiscation under Section 113(i) of the Customs Act, 1962.

Since the goods have been exported and not available for confiscation, I impose a redemption fine of Rs. 1,00,000/- (Rupees One Lakh Only) under Section 125 of the Customs Act, 1962.

(ii) I impose penalty of Rs50,000 (Rupees Fifty Thousand Only) upon them under Section 114 of the Customs Act, 1962.

(iii) I impose penalty of Rs50,000(Rupees Fifty Thousand Only) upon them under Section 114AA of the Customs Act, 1962.

(Dev Prakash Bamanavat)
Additional Commissioner
Custom House, Kandla

F.No. GEN/ADJ/ADC/1356/2024-Adjn-O/o Commr-Cus-Kandla
DIN-20240771ML0000444C7A

To,
M/s Bulzai Agro Pvt. Ltd.,
Godown No. 27 and 29,
Mithi Rohar, Gandhidham,
Kachchh, Gujarat

Copy To-

- (i) The Deputy/ Assistant Commissioner (Review/EDI/TRC) for necessary action at your end.
- (ii) Guard File.