

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA- 370421</b> <b>Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62</b>
A. File No.	: CUS/DOCK/TR/83/2024-Docks Examn-O/o Pr-Commr-Cus-Mundra
B. Order-in-Original No.	: MCH/ADC/MK/137/2024-25
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 14.09.2024/ 14.09.2024
E. Show Cause Notice No. & Date	: SCN and PH Waiver
F. Noticee(s)/Party/Exporter	: M/s Riceman India Pvt. Ltd., C-5/79, New Kondli, Mayur Vihar, Phase-3, Delhi-110096
G. DIN	<b>20240971M0 000000f0E8</b>

- यह अपील आदेश संबंधित 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),

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

**“THE COMMISSIONER OF CUSTOMS (APPEALS),**

**Having his office at 7<sup>th</sup> 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.

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, सीम शुल्क अन्य के, अधिनियम शुल्क सीमा और 1982, अपील) नियम) चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी While subMithing 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 FACTS OF THE CASE:**

M/s Riceman India Pvt. Ltd., C-5/79, New Kondli, Mayur Vihar, Phase-3, Delhi-110096 having IEC No.AAICR4668L, have filed Shipping Bill No.2228839 dated 06.07.2024 through their CHA-M/s Inter Globe Logistics for export of goods declared as Item No.1-“Muzaffar Brand Golden Sella Basmati Rice” and Item No.2-“Baadshah Brand 1401 Creamy Sella Basmati Rice” under CTH-10063020.

2. The Dock Officer after examination submitted that on physical appearance, the goods under item No.2 were found to be smaller size compared to permitted size of Basmati Rice. As per instruction received from DC/Export, RSS from item No.2 were drawn vide Test Memo No.22 dated 13.07.2024 and forwarded the same to CRCL, Kandla for testing. CRCL, Kandla vide their Report No.3837 dated 15.07.2024 concluded that “based on the physical appearance, forms and analytical finding, it is Parboiled Rice (Non-Basmati). The goods declared as “Baadshah Brand 1401 Creamy Sella Basmati Rice” (quantity-50 MTs) covered under item No. 2 were found mis-declared in terms of description as per test report dated 15.07.2024. Further, the export of Parboiled Rice attracts export duty @20% of FOB value as per Notification No.49/2023 dated 25.08.2023. In view of the above, the file was forwarded to Export Section for further necessary adjudication proceedings in the subject matter. The Dock Officer also submitted that Parboiled Rice is exported with payment of duty and also is much cheaper compared to Basmati

Rice, Shipping Bill.

3. A copy of the said Test Reports have been provided to the Exporter vide letter dated 14.08.2024 for their information with a specific request to submit their submission within 10 days of the communication as to why the proceedings should not be initiated under Customs Act, 1962 as the instant case were seen fallen under the purview of Mis-declaration of the Export cargo.

4. The exporter vide letter dated 12.09.2024 submitted that:

*This is to inform you that we are regularly exporting rice since many years from India to worldwide destinations. This is the first time that there was a quality issues in our cargo for which sampling was done.*

*Although as per the test report results, all the parameters are satisfactory for our rice (like length, breadth, LB ratio) except the elongation ratio which is short by a negligible margin of 0.004 mm (although the elongation depends upon the soaking time). The length of rice is 7.51 mm which itself prove as BASMATI.*

*Also, the consignment under export is backed by AT SIGHT LC (a copy of which is attached) by one of the Prime Bank of Saudi Arabia which itself is a statement of purity.*

*We would like to bring this to your notice that the Export price of rice declared by us in SB is Rs. 79,390/- per MT and the purchase was done at Rs. 65,810/- (we have attached the Purchase Invoice of basmati rice). On the other hand the market price for PARBOILED RICE was running at Rs. 38,000/- which is not at all comparable to Basmati price even if we add the 20% Duty.*

*Since time has passed a lot, so we respectfully accept the results of sampling and hence request you for no requirement of show cause & personal hearing.*

*Requesting you to please proceed as per further formalities of custom procedure and allow us to take our shipment back to town.*

*Humbly requesting you to please charge minimum to minimum fine / penalty as same was completely un-intentionally from our side.*

*Expecting your kind co-operation and consideration in our above request.*

5. As per Notification No.49/2023 dated 25.08.2023 issued by the CBIC, the Central Government levied export duty @20% on FOB of the

Parboiled Rice (CTH - 10063010) by including it in Second Schedule to Customs Tariff Act. However, in the instant case the exporter tried to export the same by way of mis-declaring the same as "Basmati Rice" and classifying the same under CTH-10063020 with an intention to avoid duty payment. The consignment to be exported vide the said SB was found mis-declared and hence found liable for confiscation under section 113(i) of the Customs Act, 1962.

6. The exporter has declared the goods to be exported vide the said SB as "Basmati Rice" and classified the same under CTH-10063020. However, as per Test Report, it is found and accepted by the exporter as well that the impugned goods are actually "Parboiled Rice" and not the one declared by the exporter. Also, as the goods were mis-declared, therefore, proper classification as well as re-determination of FOB/assessable value is required to be decided in this case.

7. Valuation of the impugned goods i.e. "Parboiled Rice": As the goods have been found mis-declared in respect of description and CTH, hence, it appears that, the declared FOB value Rs.39,25,996/- of the impugned goods is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

8. Whereas, it is found from the data available in the Indian Customs EDI System, during July-2024, there are export of consignments of goods of like kind and quality i.e. Parboiled Rice from Mundra Port are being exported as follows:

Average Rate / MTs (in Rs.)	Qty. of goods in this case (MTs)	Ass. Value of goods in this case (Rs.)	Applicable export duty @20% of the FOB/AV (Rs.)
iv	v	vi (iv x v)	vii (vi x 20%)
41,457	50.00	20,72,885	4,14,577

9. Whereas, it appears that, the proper and correct FOB assessable value of the goods Parboiled Rice to be exported by the exporter vide the said SB would come to Rs.20,72,885/- (as calculated above) in view of sub-rule (1) of rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Accordingly, export duty involved vide Notification No.49/2023 dated 25.08.2023 @20% on FOB on the impugned goods would come to Rs.4,14,577/- (as calculated above). However, it is pertinent to mention here that the impugned goods has not been exported. Therefore, the duty demand is not involved in the case.

10. The relevant provisions of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 are reproduced as under:

*Rule 2. Definitions. - (1) In these rules, unless the context otherwise requires, -*

- (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

**Rule 3. Determination of the method of valuation. - (1)**  
**Subject to rule 8, the value of export goods shall be the transaction value.**

**Rule 4. Determination of export value by comparison. - (1)**  
**The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).**

(2) .....

.....  
**Rule 8. Rejection of declared value. - (1)** When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2) .....

11. Further, Section 50 of the Customs Act, 1962, which places onus upon the exporter, reads as follows:

**SECTION 50. Entry of goods for exportation. -**

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export [in such form and manner as may be prescribed:

Provided that .....

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) 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.

12. Whereas, it appears that, the exporter by resorting to mis-declaration of the description/CTH of the impugned goods has failed to comply with the provisions of the Section 50 of the Customs Act, 1962. Further, the exporter has also accepted that the impugned goods to be exported vide the said SB has been mis-declared as 'Basmati Rice' (CTH-10063020) while the impugned goods are in fact "Parboiled Rice" (CTH 10063010) as confirmed from the test report.

13. Whereas, from the above, it is evident that the export of Parboiled Rice (CTH 10063010) attracts export customs duty @20% on FOB. However, the exporter tried to export the same by way of mis-declaring and mis-classifying the same with an intention to avoid payment of export customs duty amounting to Rs.4,14,577/- Accordingly, it appears that, the exporter by resorting to mis-declaration and mis-classification has rendered the impugned goods liable for confiscation under Section 113(i) of the Customs Act, 1962. Furthermore, for rendering the goods liable for confiscation, the exporter has also rendered themselves liable for penal action under Section 114(ii) of the Customs Act, 1962.

14. The relevant portion of the Section 113(i) and 114(ii) of the Customs Act, 1962 are as follows:

**SECTION 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;

**SECTION 114. Penalty for attempt to export goods improperly, etc. - Any person who, in relation to any goods, does or omits 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, -**

- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not

*exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*

*Provided that where such duty 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 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 penalty so determined*

15. In view of the above, it appears that:

- (i) The description as well as CTH of the impugned goods attempted to be exported mentioned at Sr. No.2 under Shipping Bill No.2228839 dated 06.07.2024 as "Basmati Rice" (CTH-10063020) are liable to be rejected and required to be re-classified as "Parboiled Rice" under CTH 10063010;
- (ii) The declared FOB value of the goods attempted to be exported vide Shipping Bill No.2228839 dated 06.07.2024 i.e. Rs.39,25,996/- is liable to be rejected and the goods are required to be re-assessed at the FOB value of Rs.20,72,885/- and the duty levied on the same as Rs.4,14,577/-;
- (iii) Impugned goods covered under Shipping Bill No.2228839 dated 06.07.2024 are liable for confiscation under Section 113(i) of the Customs Act, 1962;
- (iv) The exporter, M/s Riceman India Pvt. Ltd., Delhi having IEC No.AAICR4668L for rendering the impugned goods under confiscation is liable for penal action under Section 114(ii) of the Customs Act, 1962.

#### **RECORDS OF PERSONAL HEARING :**

16. The Exporter has requested for waiver of Show Cause Notice and Personal Hearing by the adjudicating authority.

#### **DISCUSSION AND FINDINGS:**

17. I have carefully gone through the records of the case. The exporter requested for waiver of Show Cause Notice and personal hearing and requested to decide the matter on merit. Thus, I find that the principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records.

17.1 The issues to be decided by me are:

- (i) The description as well as CTH of the impugned goods

attempted to be exported mentioned at Sr. No.2 under Shipping Bill No.2228839 dated 06.07.2024 as "Basmati Rice" (CTH-10063020) are liable to be rejected and required to be re-classified as "Parboiled Rice" under CTH 10063010;

(ii) The declared FOB value of the impugned goods attempted to be exported vide Shipping Bill No.2228839 dated 06.07.2024 i.e. Rs.39,25,996/- is liable to be rejected and the goods are required to be re-assessed at the FOB value of Rs.20,72,885/- and the duty levied on the same as Rs.4,14,577/-. However, the export has not taken place;

(iii) Impugned goods covered under Shipping Bill No.2228839 dated 06.07.2024 are liable for confiscation under Section 113(i) of the Customs Act, 1962;

(iv) The exporter, M/s Riceman India Pvt. Ltd., Delhi having IEC No.AAICR4668L for rendering the impugned goods under confiscation is liable for penal action under Section 114(ii) of the Customs Act, 1962.

Now, I proceed to decide the case issue-wise.

17.2 I find that the exporter declared the impugned rice to be exported under Shipping Bill No.2228839 dated 06.07.2024 declared as "Basmati Rice" under CTH-10063020 but, as per the Test Report, the consignment of the exported goods is found to be "Parboiled Rice" classifiable under CTH-10063010.

17.3 Further, the exporter submitted that is the first time that there was a quality issues in their cargo for which sampling was done. Although, as per the test report results, all the parameters are satisfactory for their rice (like length, breadth, LB ratio) except the elongation ratio which is short by a negligible margin of 0.004 mm (although the elongation depends upon the soaking time). The length of rice is 7.51 mm which itself prove as BASMATI. Also, the consignment under export is backed by AT SIGHT LC (a copy of which is attached) by one of the Prime Bank of Saudi Arabia which itself is a statement of purity. They also submitted that the Export price of rice declared by them in is Rs.79,390/- per MT and the purchase was done at Rs.65,810/-. On the other hand the market price for PARBOILED RICE was running at Rs.38,000/- which is not at all comparable to Basmati price even if, they add the 20% Duty. Since time has passed a lot, so they respectfully accept the results of sampling and hence requested for no requirement of show cause & personal hearing. Requested to proceed as per further formalities of custom procedure and allow them to take their shipment back to town.

17.4 I find that as per test report, the goods have been found mis-declared in respect of description and CTH, hence, the declared FOB cum Assessable Value of Rs.39,25,996/- of the impugned goods is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination

of Value of Export Goods) Rules, 2007. Whereas, further, it is found from the data available in the Indian Customs EDI System, during July-2024, there are export of consignments of goods of like kind and quality i.e. Parboiled Rice from Mundra Port as per following details:

Average Rate / MTs (in Rs.)	Qty. of goods in this case (MTs)	Ass. Value of goods in this case (Rs.)	Applicable export duty @20% of the FOB/AV (Rs.)
iv	v	vi (iv x v)	vii (vi x 20%)
41,457	50.00	20,72,885	4,14,577

17.5 In view of above, as per the test report and data produced before me, I find that the proper and correct FOB assessable value of the goods Parboiled Rice to be exported by the exporter vide the said Shipping Bill would come to Rs.20,72,885/- (as calculated above) in view of sub-rule(1) of rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Therefore, I find that the value declared by the exporter in Shipping Bill No.2228839 dated 06.07.2024 for the impugned goods is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and are required to be re-determined in view of sub-rule (1) of rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

17.6 I find that export duty has been imposed vide Notification No.49/2023 dated 25.08.2023 issued by the CBIC. The Central Government levied export duty @20% on the Parboiled Rice (CTH - 10063010) by including it in Second Schedule to Customs Tariff Act, 1975. However, I find that the impugned goods have not been exported.

17.7 I find that the goods attempted to be exported are found as mis-declared and mis-classified and the exporter also accepted that the goods to be exported are Parboiled Rice and not Basmati Rice, hence, mis-declared and mis-classified and therefore, I find that the goods are liable for confiscation under Section 113(i) of the Customs Act, 1962.

17.8 I find that Section 114 of the Customs Act, 1962 stipulates that:

*Any person who, in relation to any goods, does or omits 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 <sup>1</sup>[<sub>2</sub>[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;*

**(ii)** in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty 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 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 penalty so determined;

**(iii)** in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

17.9 I find that the impugned rice to be exported under Shipping Bill No.2228839 dated 06.07.2024 are found to be "Parboiled Rice", hence the exporter mis-declared and mis-classified the impugned goods, therefore, the same is liable for confiscation under Section 113(i) of the Customs Act, 1962. Further, I find that the impugned goods i.e. Parboiled Rice are dutiable goods, hence, penalty is imposable in the case under Section 114(ii) of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.

17.10 I find that in this case the submission made by the exporter and facts available as above is also considerable that the impugned goods are declared by the exporter as Basmati Parboiled Rice and Test Report is in favour of the exporter in many parameters except length of boiled Rice and elongation ratio. Further, the goods are not prohibited and as per Test Report the goods are found Parboiled Rice which satisfying the parameters of Basmati Rice as per Length and Breadth.

18. In view of the forgoing discussions and findings, I pass the following order:

### **ORDER**

- (i) I order to reject the description as well as classification of the goods to be exported vide Shipping Bill No. 2228839 dated 06.07.2024 at Item No. 2 i.e. "Basmati Rice" under CTH-10063020 and order to be re-classified as "Parboiled Rice" under CTH-10063010;
- (ii) I order to reject the declared assessable/FOB value of the goods to be exported vide Shipping Bill No.2228839 dated 06.07.2024 at Item No. 2 i.e. Rs.39,25,996/- and order to re-assess the same at the assessable/FOB value of Rs.20,72,885/-.
- (iii) I order to confiscate the Impugned goods covered under Shipping Bill No.2228839 dated 06.07.2024 at item No. 2 under Section 113(i) of the Customs Act, 1962. However, I

give the option to the exporter to redeem the same against payment of a Redemption Fine of Rs 2,00,000/- (Rupees Two Lakhs Only) under Section 125 of the Customs Act, 1962; (iv) I order to impose and recover Penalty of Rs 40,000/- (Rupees Forty Thousand Only) on the exporter under Sections 114(ii) of the Customs Act, 1962.

19. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the 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.

**OFFICE OF THE PRINCIPAL  
COMMISSIONER OF CUSTOMS**

7 SEP 2024

**INWARD SECTION  
Custom House, Mundra**

Signed by

Mukesh Kumari

Date: 14-09-2024 13:13:26

(Mukesh Kumari)  
Additional Commissioner (Export)  
Customs House, Mundra

F.No. CUS/DOCK/TR/83/2024  
14.09.2024

Dated:-

**BY SPEED POST**

To,  
M/s Riceman India Pvt. Ltd.,  
C-5/79, New Kondli, Mayur Vihar, Phase-3,  
Delhi-110096

Copy to:- (1) The Deputy Commissioner(TRC)/RRA/EDI Guard File.