



संस्थान का नाम: सर्वोच्च विद्युत उत्पाद विभाग, सर्वोच्च विद्युत, सर्वोच्च विद्युत, सर्वोच्च विद्युत, सर्वोच्च विद्युत-

370421

OFFICE OF THE PRINCIPAL COMMISSIONER OF
CUSTOMS:
CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT-
370421.

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| | | |
|----------|-----------------------------------|--|
| A | File No. | CUS/SHED/MISC/424/2024-Docks Examn-O/o Pr Commr-Cus-Mundra |
| B | OIO No. | MCH/ADC/AK/16/2024-25 |
| C | Passed by | Arun Kumar, Additional Commissioner (Import), Custom House Mundra. |
| D | Date of order | 16.04.2024 |
| E | Date of Issue | 17.04.2024 |
| F | SCN No. & Date | The importer has requested for waiver of SCN and PH |
| G | Noticee / Party / Importer | M/s. Divine Overseas (IEC-ASRPS4990C) 944, R.B. Estate, Loharka Road, Amritsar - 143001 |
| H | DIN | 20240471MO000000E3C7 |

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road Ahmedabad-380009

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

Brief facts of the case:

M/s. Divine Overseas (IEC-ASRPS4990C) having registered address at 944, R.B. Estate, Loharka Road, Amritsar – 143001 has filed Bill of Entry No. 2593856 dated 15.03.2024 through their Custom Broker M/s. Luvkush Shipping Services for importation of goods declared as “Wet Dates” having an assessable value of Rs.1,29,31,360/- under CTH 08041020 with the benefit under Notification No. 022/2022 dated 30.04.2022 Sr. No. 600 (India- UAE Comprehensive Economic Corporation and Partnership Agreement) from their overseas supplier Al Rubayat Foodstuff Trading LLC, 101, First Floor, Toufic Building, Al Ras Deira, Dubai, UAE, United Arab Emirates. The details of Bill of Entry are as follows:-

| | | |
|---------------------------|---|---------------------------|
| Bill of Entry No. & Date | : | 2593856 dated 15.03.2024 |
| Name of Importer | : | M/s. Divine Overseas |
| IEC No. | : | ASRPS4990C |
| Name of the CB | : | Luvkush Shipping Services |
| Description of Goods | : | Wet Dates |
| Declared CTH | : | 08041020 |
| Assessable Value (in Rs.) | : | 1,29,31,360/- |
| Total Duty (in Rs.) | : | 15,51,763/- |

2. The goods were examined 100% under supervision of Appraiser (Docks) and in presence of the CB representative. On examination, the goods were found to be Wet dates. On-going through the labelling imprinted on the packing of the goods, it is observed that there are two stickers which are pressed on each other. The outermost sticker contains the details of import i.e. name of manufacturer of the goods, name of the exporter and importer details as declared in Bill of Entry by the importer. Further, on removing the outermost sticker, country of origin of the goods found to be Iran on the innermost sticker. Thus, the goods are found of Iranian origin instead of Dubai Origin.

3. In the instant case, it appears that the importer has deliberately mis-declared the country of origin of the goods as Dubai instead of Iran, in order to avail the duty benefit under Notification No. 022/2022 dated

30.04.2022 Sl No. I600 (India-UAE Comprehensive Economic Corporation and Partnership Agreement). Since the goods were found to be Iranian origin, duty benefit under Notification No. 022/2022 dated 30.04.2022 Sl No. I600 is not admissible on the goods imported under Bill of Entry No. 2593856 dated 15.03.2024.

| Bill of Entry No. and Date | Qty (in kgs) | Ass. Value Declared in the BE | Duty paid with CO benefit | Duty payable without COO benefit | Differential Duty |
|----------------------------|--------------|-------------------------------|---|--|-------------------|
| 2593856 dated 15.03.2024 | 2500 | 1,29,31,36 0/- | BCD-Nil SWS-Nil IGST@12%-15,51,763/- Total Duty paid-15,51,763/- | BCD@20%- 25,86,272/- SWS@10%- 2,58,627/- IGST@12%- 18,93,151/- Total Duty payable- 47,38,050/- | 31,86,287/- |

The matter has been transferred to Import Assessment from Docks Examination for necessary adjudication proceedings in the matter on 01.04.2024.

4. Legal provisions:

4.1 Section 46(4):

4) *The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 13 [and such other documents relating to the imported goods as may be prescribed].*

[(4A) The importer who presents a bill of entry 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.]*

4.2 Section 111. Confiscation of improperly imported goods, etc. –
The following goods brought from a place outside India shall be liable to confiscation:-

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

4.3 Section 112. Penalty for improper importation of goods, etc. –*Any person,-*

a. 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 111, or abets the doing or omission of such an act, or

*(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,
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 the value of the goods or five thousand rupees, 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:

SHOW CAUSE NOTICE & PERSONAL HEARING

5.1. The importer vide letter dated NIL have submitted dated unfortunately, they encountered an issue with the labeling on the boxes and found Iran origin label on the boxes. The importer further submitted that it is their supplier mistake as they had order UAE origin dates only. The importer vide said letter informed that they have not initiated any remittances against shipment and found it necessary to return the shipment to their original supplier in the UAE. Therefore, they requested for permission for the re-export of the container to their supplier after customs formalities.

5.2. Further, vide letter received email on 03.04.2024, the importer has requested to waive off Show Cause Notice and Personal Hearing and decide the matter on merit and requested for minimum fine and penalty.

DISCUSSION AND FINDINGS

6. I find that the importer vide letter e-mailed on 03.04.2024 has requested for to waive off Show Cause Notice and Personal Hearing and decide the matter on merit, I note that the principles of natural justice have been complied.

6.1. I find that the importer vide letter dated Nil has themselves accepted that the goods are of Iran origin instead of UAE origin and that they wish to re-export the said consignment to their original supplier, hence, COO benefit availed by the importer itself becomes unavailable, therefore, the issue of availability of COO benefit for clearance of goods for home consumption need no further discussion. The only issues to be decided in the impugned Bill of Entry are:

- Whether the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise.
- Whether the importer are liable for penal action under section 112 (a) (ii) of the Customs Act, 1962.

6.2. M/s. Divine Overseas filed Bill of Entry No. 2593856 dated

15.03.2024 for importation of goods declared as "Wet Dates" having an assessable value of Rs.1,29,31,360/- under CTH 08041020 with the benefit under Notification No. 022/2022 dated 30.04.2022 Sr. No. 600 (India- UAE Comprehensive Economic Corporation and Partnership Agreement).

6.3 During examination of the goods were found to be of Iranian Origin and thus, it appears that the importer has wrongly declared the Country of Origin as UAE to avail the duty benefit under Notification No.22/2022 dated 30.04.2022. It appears that importer has wrongly declared the country of origin as UAE instead of IRAN to evade Custom Duty amounting to Rs. 31,86,287/- (Rupees Thirty One lakhs Eighty Six Thousand and two hundred eighty seven only) which is applicable if the goods are imported from IRAN .

6.4 I find that in the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. Whereas, the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, *ibid* casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the country of Origin and declaring applicable duty on the imported goods.

6.5. I find that the importer themselves accepted the mis-declaration of the country of origin and requested for re-export of the impugned consignment to their original supplier. Therefore, I hold that the said Bill of Entry required to be re-assessed by denying the duty benefit under Notification No.22/2022 dated 30.04.2022 for the re-export purpose only. Further, I find that the importer has wrongly declared the country of origin as UAE instead of IRAN to evade Custom Duty amounting to Rs. 31,86,287/-, this act of omission and commission of the importer made the said imported goods liable for confiscation under Section 111 (m) of Customs Act 1962 and the importer has rendered themselves liable for penal action under Section 112 of Customs Act 1962.

6.5. Whereas, Section 125(1) of the Customs Act, 1962 provides that: *"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit".*

6.6. I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts and request of the importer for re-export of the goods to their original supplier, I find it appropriate to grant an option to pay redemption fine in lieu of confiscation of the subject with condition to re-export of the said goods.

6.7. I note that goods are being allowed for re-export which entails that no benefits are accrued to the importer which could have been otherwise available had the goods been allowed for home consumption. It is but obvious that no margin of profit is available to the importer which needs to be obliterated. Further they have to incur expanses in arranging export therefore a lenient view is warranted for imposition of redemption fine.

7. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

- I. I order for confiscation of the goods imported under Bill of Entry No. 2593856 dated 15.03.2024 having declared assessable value of **Rs.1,29,31,360/-** under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 10,50,000/- (Rs. Ten Lakh Fifty Thousand Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.
- II. I impose a penalty of Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand

Only) on the importer M/s. Divine Overseas under Section 112(a)(ii) of the Customs Act, 1962.

8. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Signed by

Arun Kumar

Date: 16-04-2024 (19:33:54)
Arun Kumar

Additional Commissioner

Import Section, CH Mundra

F.No: CUS/SHED/MISC/424/2024-Docks Examn-O/o-Pr-Commr-Cus-Mundra

To,

M/s. Divine Overseas (IEC-ASRPS4990C)
944, R.B. Estate, Loharka Road,
Amritsar - 143001

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. The Manager, Concerned CFS, AP & SEZ, Mundra
5. Guard File.