



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE MUNDRA, 5-B, PORT USER BUILDING (PUB),
AP & SEZ, PORT ROAD, MUNDRA PORT, MUNDRA-370421**

A	File No.:	CUS/APR/BE/883/2023-Gr 1
B	Order-in-Original No.:	MCH/ADC/MK/56/2023-24
C	Passed by:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	30.05.2023
E	Date of issue:	30.05.2023
F	Importer:	M/s Viral Corporation (IEC No.: 2407006755) G-206, Lodhika GIDC, Kalawad Road, Metoda, Dist. Rajkot, Gujarat-360021
G	SCN No. & Date	Importer waived SCN vide letter dated 23.05.2023
H	DIN	20230571MO00008858B9

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the **COMMISSIONER OF CUSTOMS (APPEAL), MUNDRA**, having office at **7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009** in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

Sub.: Import of “Guatemalan Cardamom Whole” by M/s Viral Corporation (IEC No.: 2407006755) – m/reg.

Brief Facts of the Case

M/s Viral Corporation, (IEC No.: 2407006755) (hereinafter referred to as "the importer" for the sake of brevity) having their registered address at G-206, Lodhika GIDC, Kalawad Road, Metoda, Dist. Rajkot, Gujarat-360021 filed two Warehouse Bill of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 through their Custom Broker M/s Luvkush Shipping Services(CINPS7215LCH002) for clearance of total weight 21.5 MTs of goods declared as "**Guatemalan Cardamom Whole**" under CTH 09083190 having total assessable value of Rs. 83,15,000/-. The details of both BE are as under:-

TABLE-A

Sr. No.	BE No. & Date	Declared						
		(in Rs.)		Qty MTS	Ex. Rate	Unit Price Declared	Assessable Value	Duty Declared
1	5615320/ 21.04.2023	10.75	83.15	5	USD/KGS	41,57,500/-	35,69,214/-	415.75/-
2	5737671/ 29.04.2023	10.75	83.15	5	USD/KGS	41,57,500/-	35,69,214/-	415.75/-
Total		21.5				83,15,000/-		

2. The BE mentioned at Sl No. 1 of above table was assigned to Kolkata Sea Port(INCCU1) and BE mentioned at Sl. No. 2 was assigned to Tuticorin Sea Port(INTUT1) for assessment in FAG. Both Bills of Entry were pushed to PAG i.e. Mundra Sea Port(INMUN1) on the grounds that "*The goods appear to be prohibited as CIF declared price i.e. Rs. 415.75 per KG is less than MIP of Rs. 500/-KG as per DGFT Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015. The query reply in this regard appears unsatisfactory in as much as there is no condition in the DGFT Notification which exempts goods filed for deposit in warehouse and later on to be re-exported*".

3. The importer vide letter dated 17.05.2023 has submitted that they have received an export order for 50 MTS of **Cardamom Green** from their overseas buyer M/s Montaz Uddin & Brothers, Bangladesh under purchase order No. SC/VC/41/22-23 dated 10.12.2022.

3.1 For completing this export order, they had imported Cardamom Green vide two warehouse Bill of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023. They submitted that the goods are meant to be re-exported to their overseas buyer of Bangladesh. The goods are not

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meant for clearance for home consumption, hence minimum Import price (MIP) is not applicable on the goods. Further, they had also filed Warehouse Bill of Entry so that the goods can be directly re-exported from bonded warehouse.

3.2 Further, they gave reference of Para No. 3(2F) of Foreign Trade (Exemption from application of Rules in certain case) Amendment Order, 2018 dated 25.07.2017 issued by DGFT which is reproduced below:-

"Any good imported and bonded on arrival in India for re-export to any country outside India, except Nepal and Bhutan".

They submitted that when goods are imported for re-export purpose and put into bonded warehouse on arrival, the goods are exempted for MIP criteria as imposed vide Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 by the DGFT.

4. The DGFT vide their Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 had imposed MIP under CTH 0908 31 which is as follows:

HS Code	Item Description	Policy	Policy Condition
	Cardamoms:		
0908 31	Neither crushed nor ground:		
0908 31 10	Large (amomum)	Free	Subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006.
0908 31 20	Small (ellettaria), alleppey green	Free	Subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006.
0908 31 30	Small, coorg green	Free	Subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006.
0908 31 40	Small, bleached, half bleached or bleachabl	Free	Subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006.
0908 31 50	Small, mixed	Free	Subject to CIF value of Rs. 500/- and above per Kilogram and provisions

			of FSSAI Act, 2006.
0908 31 90	Other	Free	Subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006.

Effect of this Notification: The minimum import price (MIP) of Cardamom with HS code 0908 31 of Chapter 09 of ITC (HS), 2012 – Schedule – 1 (Import Policy) is fixed at Rs. 500/- per Kg., with immediate effect.

5. As per aforesaid DGFT Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015, import of Cardamoms is permitted freely subject to CIF value of Rs. 500/- and above per Kilogram and provisions of FSSAI Act, 2006. In the present case, the importer has imported Cardamom having CIF value of **Rs. 415.75** per Kilogram, which is below the minimum floor price fixed of Rs. 500 per Kilogram.

6. In view of the above notification of DGFT, it is observed that the CIF value of the said goods as per import documents is Rs. 415.75/- per kg which is below the prescribed rate of Rs. 500/- per kg in terms of above said DGFT Notification. Therefore, the imported goods appear to be liable for confiscation under Section 111(d) &111(m) of the Customs Act, 1962 and thereby rendering the importer liable for penalty under Section 112(a) of the Customs Act, 1962.

7. Further, the importer's submission as mentioned in para 3.2 is not sustainable as there is no such condition in the DGFT Notification which exempts the goods (filed for deposit in warehouse and later on to be re-export directly from warehouse) from MIP imposed vide Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 by the DGFT.

8. LEGAL PROVISIONS APPLICABLE IN THE CASE:

8.1 Following provisions of law are applicable in the present case:

SECTION 2. Definitions.

(3A) “*beneficial owner*” means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

SECTION 46(4) OF THE CUSTOMS ACT, 1962:

(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, and such other documents relating to the imported goods as may be prescribed.

SECTION 111 (d) & (m) OF THE CUSTOMS ACT, 1962:

111. *Confiscation of improperly imported goods etc.*

The following goods brought from the place outside India shall be liable to confiscation:

(d) *any goods which are imported or attempted to be imported or are brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*

(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];*

SECTION 112(a) OF THE CUSTOMS ACT, 1962 :

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, 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, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;*

SHOW CAUSE NOTICE & PERSONAL HEARING

9. The importer vide their letter dated 17.05.2023 has requested to allow re-export the goods imported vide warehouse Bills of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 to a third country. Further, the importer vide letter dated 23.05.2023 submitted that they do not want any Show Case Notice or Personal Hearing in this matter.

DISCUSSION AND FINDING

10. I have carefully gone through the case records and applicable

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provisions of law applicable in the subject case. Importer vide letter dated 17.05.2023 has requested to allow re-export of the consignments mentioned here-in-above. The importer submitted that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of principle of natural justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

10.1 I find that the importer M/s Viral Corporation had filed two Warehouse Bill of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 through their Custom Broker M/s Luvkush Shipping Services(CINPS7215LCH002) for clearance of total weight 21.5 MTS of goods declared as "Guatemalan Cardamom Whole" under CTH 09083190 having total assessable value of Rs. 83,15,000/- at CIF value of Rs. 415.75/- per Kilogram.

10.2 I find that the DGFT vide their Notification No. 109/(RE-2013)/2009-2014 dated 06.02.2015 had imposed MIP on import of Cardamom under CTH 0908 31 at Rs. 500/- per Kg. The impugned bills of entry were self-assessed by the importer in terms of Section 17(1) of the Customs Act, 1962. If the goods are to be freely imported by classifying under CTH 09083190, the minimum CIF value of the goods shall be Rs. 500/- per kg. The goods become prohibited automatically if the CIF value is less than Rs. 500/- per kg.

10.3 I find that the CIF value of the said goods as per import documents is Rs. 415.75/- per kg which is below the prescribed rate of Rs. 500/- per kg in terms of said DGFT Notification. Therefore, the imported goods are held liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 and thereby rendering the importer liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

10.4 I find that the importer vide letter dated 17.05.2023 has requested to re-export the goods covered under Bills of Entry mentioned in Table-A. As discussed above, since the subject goods have been found to be prohibited and liable for confiscation, I find it appropriate to allow re-export of the subject goods subject to redemption under section 125 of the Customs Act, 1962. Section 125 of the Customs Act, 1962 provides that *whenever confiscation of any goods is authorized by the Customs Act, 1962, the officer adjudging it 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*

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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 fine as the said officer thinks fit. However, in this case redemption is being allowed only for re-export and thus, there will be no margin of profit. Quantum of redemption fine is being decided considering this fact.

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

ORDER

11.1 I order for confiscation of the goods imported vide Bills of Entry No. 5615320 dated 21.04.2023 & 5737671 dated 29.04.2023 having total assessable value of **Rs. 83,15,000/-** (Rupees Eighty-Three Lakh Fifteen Thousand Only) under Section 111(d) & 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. 4,00,000/-** (Rupees Four Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

11.2 I impose a penalty of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) on the importer M/s Viral Corporation (IEC No:- 2407006755) under Section 112(a)(i) of the Customs Act, 1962.

11.3 I permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

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

Mukesh Kumari
Additional Commissioner
Import Section, Cus-Mundra

Date:30-05-2023 16:42:05

F.No. CUS/APR/BE/883/2023-Gr. I Date:30-05-2023

To,

M/s Viral Corporation
(IEC No.: 2407006755)
G-206, Lodhika GIDC, Kalawad Road,
Metoda, Dist. Rajkot, Gujarat-360021

Copy to:-

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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. Guard File.