



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor**, हडको भवन **HUDCO Bhawan**, ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura**, अहमदाबाद **Ahmedabad - 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20260171MN000050525F

क	फ़ाइल संख्या FILE NO.	S/49-119/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-632-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	01.01.2026
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/MK/71/2024-25 dated 13.06.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	01.01.2026
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s R V Exports Pvt Ltd A18, Nityanand Nagar, Queens Road, Vaishali Nagar, Jaipur, Rajasthan - 302021



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगैज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में त्रिनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ
	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016
	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हज़ार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हज़ार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हज़ार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील :- अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

Appeal has been filed by M/s R V Exports Pvt Ltd, A18, Nityanand Nagar, Queens Road, Vaishali Nagar, Jaipur, and Rajasthan - 302021, (hereinafter referred to as the 'Appellant' in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/71/2024-25 dated 13.06.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had filed Shipping Bills no. 7663036 dated 09.02.2023 and 9787164 dated 05.05.2023 through their CHA M/s Worldwind Shipping Services for export of goods declared as "Indian Parboiled Rice" classified under CTH 10063010. As per Board Instruction No. 29/2022-Customs dated 28.10.2022, representative sample was drawn and sent to CRCL Kandla and the cargo was allowed for export on provisional basis on submission of Test Bond submitted by the Appellant which was accepted by the Deputy Commissioner (Export), Customs House, Mundra. Respective Test Reports have been received against the Test Memo wherein it is mentioned that "Based on the physical appearance, forms and analytical findings, it appears to be "Parboiled Rice (Broken 34.66% & 28.40% respectively)", against the declared export cargo in the Shipping Bill as "Indian Parboiled Rice". The details of Shipping Bills and their corresponding Test Report are as under:

Sr. No.	Shipping Bill No & Date	Nt Wt.	Test Report No. & Date	FOB Declared in SB (in Rs.)	Summary of Test Result
1.	7663036 dated 09.02.2023	132.5 Mts	9679 dated 09.02.2023	42,08,836	Parboiled Rice (Broken 34.66%)
2	9787164 dated 05.05.2023	265 Mts	1637 dated 05.05.2023	82,61,738	Parboiled Rice (Broken 28.40%)

2.1 A copy of the said Test Report was provided to the appellant 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 was seen falling under the purview of



Mis-declaration of the Export cargo. With reference to above mentioned shipping bills, the Appellant classified the same goods as "Indian Parboiled Rice" classified under CTH 10063010 but pursuant to the outcome of the Test Result, the consignment of the exported goods was found to be "Parboiled Rice (Broken 34.66%) and Parboiled Rice (Broken 28.40%)". As per Customs Tariff, Broken Rice is rightly classifiable under CTH 10064000 and therefore the goods already exported were required to be classified under CTH 10064000 and to be confiscated being Prohibited Goods as per Notification No. 31/2015-2020-Customs dated 08.09.2022 issued by the Board. It is also pertinent to mention that goods are also found to be other than Parboiled which concludes to be a mis-declaration as well.

2.2 The appellant under the Customs Bond had bind themselves to the effect that in the event of failure of cargo in the Test Report, the Appellant will pay the duty alongwith interest, fine and/or penalty, if any imposed for contravention of the Customs Act, 1962 and other allied Acts. On the basis of Customs Bond submitted by the Appellant, the goods have been allowed for ultimate export provisionally. Subsequently, the Test Reports have confirmed the export goods were "Parboiled Rice (Broken 34.66%) and Parboiled Rice (Broken 28.40%)". Accordingly, Shipping Bills mentioned in the Table above needed to be assessed finally on the basis of Test Report. On the basis of Test Report, the goods needed to be re-classified under CTH 10064000. The Appellant appeared to have failed to declare the correct classification of the export cargo in the Shipping Bills. It appeared that the Appellant had mis-declared the export cargo in respect of classification in order to evade payment of export duty/cess leviable on the export cargo. Thus, the Appellant had contravened the provisions of the Section 50 of the Customs Act, 1962. The acts of omission and commission made by the Appellant rendered the export cargo liable for confiscation under Section 113 (d) and 113(i) of the Customs Act, 1962. On account of export goods liable for confiscation, the Appellant had made themselves liable for penal action under Section 114 (i) & 114(ii) of the Customs Act, 1962. On account of contravention of the provisions of Section 50 of the Customs Act, 1962, the Appellant has made themselves liable for penal action under Section 117 of the Customs Act, 1962

2.3 In view of the above a Show Cause Notice, dated 20.09.2023, was issued whereby the Appellant was called upon to show cause as to why:

- (i) the classification of the goods declared by the Appellant under

He



Shipping Bills tabulated above should not be rejected and re-classified under CTH 10064000;

- (ii) the goods covered under Shipping Bill tabulated above should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962;
- (iii) the penalty under Section 114 (i) and (ii) of the Customs Act, 1962 should not be imposed upon the Appellant;
- (iv) the penalty under Section 117 of the Customs Act, 1962 should not be imposed upon the Appellant.

2.4 Consequently, the Adjudicating Authority passed the following order:

- (i) He ordered to reject the classification of the exported goods under CTH 10063010 as declared by the Appellant and ordered to re-classify the same under CTH- 10064000 for Shipping Bill Nos. 7663036 dated 09.02.2023 and 9787164 dated 05.05.2023;
- (ii) He ordered to confiscate the goods having FOB value of Rs. 42,08,836/- and Rs. 82,51,738/- covered under Shipping Bill Nos. 7663036 dated 09.02.2023 and 9787164 dated 05.05.2023 respectively under Section 113 (d) & 113 (i) of the Customs Act, 1962. However, as the goods have already been exported provisionally under Bond, he imposed Redemption Fine of Rs. 13,00,000/- (Rupees Thirteen Lakhs only/-).
- (iii) He ordered to impose and recover Penalty of Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousands only) covered under Shipping Bills No. 7663036 dated 09.02.2023 and 9787164 dated 05.05.2023 under Section 114 (i) of the Customs Act, 1962;
- (iv) He refrained from imposing penalty under Section 114(ii) & 117 of the Customs Act, 1962 for the reason discussed in the impugned order;




SUBMISSIONS OF THE APPELLANT:

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that vide the Letter dated 03.03.2023, the results of Test Report No. 9679 dated 28.02.2023 against Shipping Bill No. 7663036 were communicated to the Appellant and the copy of the said Test Report was provided. In the said Letter, there was no mention of Test Report No. 1637 dated 05.05.2023 against the Shipping Bill No. 9787164. Moreover, the copy of the Test Report No. 1637 was never provided to the Appellant for perusal. Till date the test report is not communicated to the Appellant. Consequently, in their Reply dated 10.05.2023 received on 12.05.2023, the Appellant was able to make a request for retesting of the sample against the first test report only. The Appellant never got the opportunity to peruse the Test Report pertaining to Consignment-2 so as to challenge its findings or to make a request for retesting of the sample taken against it.

3.2 Therefore, it came as a shock to the Appellant when vide the SCN dated 20.9.2023, the Appellant was inter-alia directed to show cause as to why the goods exported against Shipping Bill No. 9787164 should not be confiscated and penalty should not be levied against them. The SCN simply mentioned that 'Respective Test Reports have been received against the Test Memo wherein it is mentioned that 'Based on the physical appearance, forms and analytical findings, it appears to be Parboiled rice (broken 34.66%) against the declared export cargo in the shipping bill as 'Indian Parboiled Rice'.

3.3 The Appellant never got the opportunity to peruse the said Test Report so as to challenge its findings. Moreover, the impugned Order also does not provide any reasons for not providing the Appellant with such an opportunity before confirming the demand.

3.4 It is an established principle that there must be full disclosure of evidential facts and all documents on the basis of which the authority has taken a decision. The affected party must get a chance to go through all the material/documents relied upon on the basis of which the decision was taken. It is a settled law that not providing the material on the basis of which the



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proceedings were initiated amounts to a violation of the principles of natural justice.

3.5 Thus, it is submitted that against the backdrop of not providing the Appellant with the copy of the Test Report No. 1637, the initiation of proceedings against the Appellant vide the SCN and consequent confirmation of demand through the impugned order, amounts to a grave violation of the principles of natural justice.

3.6 It is a settled principle that the materials on the basis of which demand has been raised must be communicated to the affected party, and non-communication of the same amounts to violation of the principles of natural justice.

3.7 In this regard, reference is made to the decision of the Hon'ble Allahabad High Court in the case of Agrim Chemicals v Commissioner of Central Tax 2021 (9) TMI 786 Allahabad High Court. In this case, the copies of the CRCL test reports, on the basis of which the demand was made, were provided to the Appellants on the date of virtual hearing and the complete copies were not provided. The Hon'ble Allahabad High Court set aside the impugned order on the basis that the test report was not provided. Relevant part of the judgment is reproduced below:

"In view of such pleadings, we conclude that the averment made in paragraph 24 of the writ petition stands admitted to the revenue. Thus the report of the CRCL was first confronted to the petitioner on 20.10.2020 and not earlier. Therefore, in the first place adequate opportunity was not granted to the petitioner to object to that report.

We may have been persuaded to take a different view in the light of the written objection submitted by the petitioner after hearing, on 26.10.2020, however, in absence of any discussion as to the objection thus raised by the petitioner, in the order impugned, and further in view of the further assertion made by the petitioner, the had not been supplied to the petitioner, we find that the principle of natural justice has been violated, inasmuch as neither the petitioner was confronted with the adverse material within time as to allow it a reasonable opportunity to object to the same nor his objection submitted has been considered in the impugned order."

[Emphasis supplied)



The above case is squarely applicable to the present facts in as much as the Test Report No. 1637 has never been communicated to the Appellant.

3.8 Further, reference is made to the decision in I.E. Vittal Vs. Appropriate Authority 1996 (6) TMI 81 by the Andhra Pradesh High Court. In this case, the authority had not provided the Petitioners with the copies of the documents relied upon by them to record the findings. The documents were crucial for deciding the liability of the Petitioners. The Hon'ble High Court observed that where a statutory authority relies upon a document in a proceeding but denies a copy of the same to the affected party, the principles of natural justice are violated as the opportunity of being heard should be an effective formality and not an empty formality.

3.9 It is submitted that the above observation is squarely applicable in the instant case as the entire demand is based on a single document i.e., the Test Report - the copy of which was never provided to the Appellant. The Appellant never got the opportunity for perusing the findings of the Test Report and for placing their contentions against such findings. Therefore, the impugned order has violated the principles of natural justice to the extent of confirming the demand on the basis of the Test Report No. 1637.

3.10 Reference is also made to the below decisions in which the right of the assessee to inspect the record and all relevant documents and materials which are used against him has been highlighted:

- Suraj Mall Mohta and Co. v A.V. Visvanatha Sastri 1954 (5) TMI 1
— Supreme Court
- Dhakeswari Cotton Mills Ltd. Vs. CIT (1955) AIR 65
- Kothari Filaments vs Commissioner of Customs (Port) Kolkata 2009
(233) ELT 289 (SC)

3.11 On reading the above judgments, it can be understood that the Courts have time and again highlighted the importance of providing the relevant material to the assessee as well as the providing the assessee with the opportunity of placing any relevant material it has before the authority. In the instant case, the Appellant was also deprived of the opportunity of placing the materials that they have in their defense. In view of the above, it is submitted



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that by not supplying the Appellant with a copy of the Test Report No. 1637 dated 05.05.2023, a grave violation of the principles of natural justice has been committed. Therefore, the order to the extent it is based on findings of such Test Report not supplied to the Appellant deserves to be set aside. Not granting any opportunity of personal hearing amounts to violation of the principles of natural justice.

3.12 It is reiterated that the Notice for Personal Hearing dated 27.02.2024 pertained to the matter with respect to Shipping Bill No. 7663036. Accordingly, the Appellant could only reiterate the request for re-testing with respect to the goods exported under the said Shipping Bill. No opportunity for hearing was granted to the Appellant in respect of the goods exported under Shipping Bill No. 9787164 dated 05.05.2023, and the impugned Order was passed directly.

3.13 It is submitted that by confirming the demand under the impugned Order in the backdrop of not providing the Appellant with any opportunity of personal hearing, a grave violation of the principles of natural justice has been committed.

3.14 Reference is made to the below decisions in which it has been observed that not granting the opportunity for personal hearing amounts to a violation of the principles of natural justice:

- State of Orissa v Miss Binapani Dei (1967) 2 SCR 625
- Bharat Mint and Allied Chemicals v Commissioner of Commercial Tax 2022 (2) TMI 350
- Ogun Steels Pvt Ltd. v Assistant Commissioner (ST), Coimbatore 2024 (82) G.S.T.L. 262 (Mad.)
- Raj Kumar Singh v Assistant Commissioner, Asansol Charge, West Bengal 2022 (64) G.S.T.L. 40 (Cal.)
- Data Field India Ltd. v Deputy Commissioner of Customs (EOU), Chennai 2016 (331) E.L.T. 557 (Mad.)

Therefore, the said Order deserves to be quashed on this ground itself.

3.15 The entire demand against the goods exported under Shipping Bill No. 7663036 dated 09.02.2023 has been confirmed solely on the basis of the findings of CRCL Test Report No. 9679 dated 28.02.2023. However, in the said




Report, the Chemical Examiner has noted that 'based on the physical appearance, forms and analytical findings, it may be considered as Parboiled Rice. However, other tests, including microbiological test couldnot be ascertained for want of testing facility'. Thus, the conclusion regarding the composition of the sample has been arrived at merely on the basis of physical appearance, forms and analytical findings. By way of submissions made further in this Appeal, it has been elaborated as to how the method adopted by the Departments laboratory is not as per the industry standards for testing of broken rice. Further, classification of a sample merely on the basis of physical appearance lacks scientific backing.

3.16 It is important to note that the Chemical Examiner has himself noted that the other tests, including microbiological tests could not be ascertained for want of testing facility. When the Chemical Examiner has himself admitted the Departmental laboratory lacks the proper testing facility to determine the percentage of broken rice in the sample, then such finding is devoid of any merit and no demand can be confirmed purely on the basis of such report. In this regard, reference is made to Circular No. 46/2020 - Customs dated 15.10.2020 on the subject — *Samples - Testing of outside samples by Revenue Laboratories - Guidelines and New Customs House Laboratories Limited". The relevant portion of the said Circular is reproduced below:

"4. Accordingly, the Board prescribes the following guidelines:

(i) As Revenue Laboratories can deal with the samples related to Drug Controller, FSSAI & Textile Committee, all the customs samples, are preferably be tested in the Revenue Laboratories only.

(ii) In case facility to test particular commodity or parameter is not available in the nearest Revenue laboratory, such cases shall be referred to the nearest government laboratory where such facility is available.

(iii) CRCL, New Delhi shall also function as Referral Laboratory along with other referral laboratories in Pharma, Textile & Food.

(iv) Whenever CRCL / Laboratories are not in a position to carry out a test, they shall make use of nearest CDSCO/FSSAI approved laboratories/Textile Committee".

{Emphasis supplied}

3.17 The above Circular clearly prescribes that when the facility to test a particular parameter is not available in the nearest Revenue Laboratory, then



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such cases shall be referred to the nearest Government laboratory where such facility is available. Further, whenever CRCL laboratories are not in a position to carry out a test, then they shall make use of the nearest CDSCO/FSSAI approved laboratories. However, in the instant case, despite admission of the fact that the CRCL Laboratory Kandla lacks the testing facility to carry out the necessary test, no effort was made to make use of any other laboratory which are equipped with such facilities. Hence, the CRCL Test Report being inconclusive cannot be relied upon. Consequently, the impugned order is also liable to set aside.

3.18 It is a settled position that Circulars are binding on the Department and Department cannot take a position contrary to a Circular issued by it. In this regard, reliance is placed on the decisions of the Hon'ble Supreme Court in the case of UOI v. Arviva Industries Ltd., 2007 (209) ELT 5 (SC), CCE Vs. Dhiren Chemical Industries [2002 (139) ELT 3 (SC)] and CCE Vs. Ratan Melting and Wires Industries [2008 (12) STR 416 (SC)].

3.19 In light of the above, the Appellant submits that the Department was bound to follow the Circular dated 15.10.2020. The Department has acted in clear violation of procedure prescribed under the said Circular. The testing of the rice being done in violation of the Circular is null and void. Hence, the Test report cannot be relied upon and the Impugned Order must be set aside for this reason alone. The conclusion of the Test Report as to the percentage of broken rice is not correct / specified and is also not as per standards.

3.20 It is submitted that there are established tests for testing food-grains as prescribed by accredited authorities. One such is test, as prescribed by the Bureau of Indian Standards ('BIS) is IS 4333 (Part 1), which provides for the manner of testing food grains. It is submitted that the assessment standard in the method has been based on national and international practices to ensure the adoption of uniform terminology and methods for test of foodgrains throughout the country. The CRCL Test Report does not mention any such method adopted for checking the broken rice component in the sample, and simply provides that the sample is composed of 34.66% broken grains, while noting that the same was done 'on the basis of physical appearance, forms and analytical findings'.

3.21 It is submitted that there is no literature which provides that the nature of rice can be determined simply on the basis of physical appearance and



form. Further, it appears to be an impossible task to analyse the exact percentage of broken rice solely based on physical appearance. The Test Report is also silent as to what analysis has been carried out to draw the conclusion about the nature of the rice. In the absence of using any proper method for testing as per standards and without providing any method/reasoning for arriving at such a finding, the CRCL Test Report is inconclusive.

3.22 In this connection, the Appellant draws reference to Circular 29/2022- Cus (Instruction) dated 28.10.2022 which prescribes the procedure for identification of parboiled rice varieties. At Para 3.1, the Circular clearly provides as follows: "The Department of Food and Public Distribution (DFPD) has informed that there is no direct method, other than by testing, found in the literature, to identify parboiled rice variety with certainty vis-a-vis other." However, the CRCL Test Report makes no mention of any test method found in the literature for making a conclusion as to the composition of the sample.

3.23 It is submitted that it is a settled position of law that test reports which not carried out in conformity with the prescribed specifications are not reliable. In this connection, the relevant portion of the judgment in Sachdeva & Sons, Amritsar v Collector of Customs, Bombay 1987. In this decision, the Court has clearly observed that where the instructions for taking samples, quantum of samples etc. are not followed, then a doubt is cast as to the test certificate issued. The relevant portion of the judgment is reproduced below:

"In the certificate of the Bombay Agmark authorities relied on by the Additional Collector, the particulars regarding moisture, length, breadth, length breadth ratio, average length, average breadth were not given. The sample taken for analysis according to certificate is 20 gms. The tots/ quantity sought to be exported was 3050 bogs. They were in three lots. As has been seen earlier, the Agricultural Marketing Adviser had issued instructions as to how samples should be token, the quantum of sample to be taken and according to the instructions, if the number of bags exceeds 1000 then 5% sample is required to be taken. I have already set out the details of the instructions in the preceding Paragraph. The Bombay Agmark authorities appears to have not followed the instructions..... Thus, a doubt is cast as to the test certificate issued by the Agmark authority, Bombay".

(Emphasis supplied)



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3.24 This principle regarding the non-reliability of the reports wherein there are anomalies in the test report has also been upheld in the following case laws:

- 20 Microns Ltd. v. Commissioner of Customs (Import), Mumbai, 2019-TIOL-2941-CESTAT-MUM.
- Adani Wilmar Ltd. and Ors. v. Commissioner of Customs, 2008- TIOL-823-CESTAT-AHM
- CC(Prev), Kolkata v. Anutham Exim Private Limited, 2021-TIOL-85 CESTAT-KOL

3.25 In view of the above submissions, the impugned Order which is based solely on such inconclusive test reports deserves to be set aside. The CRCL test report or the test memo does not specify how the sample for testing was drawn. The Test Memo No. 174 and the CRCL Test Report No. 9679 provides that the sample was tested but is completely silent as to the method of sampling adopted for carrying out the inspection. Therefore, the possibility that CRCL may have drawn a sample from a single bag for inspection, thereby leading to skewed results cannot be denied. Hence, it cannot be established as to whether the sample drawn by Customs is the representative sample for the consignment. Further, IS 4333 (Part 1) published by the Bureau of Indian Standards prescribed the method for determination of refractions in food grains. It inter alia provides for the method of preparation of test sample. The same has not been followed by Customs.

3.26 It is a settled principle in law that when the test sample is drawn incorrectly or improperly and not as per standards, the consequent test report is not reliable. The Appellant relies on the case of Jethanand Rohra and Ors v. Commissioner of Customs (Import), Nhava Sheva, 2022-VIL-412- CESTAT-MUM-CU. In the said decision, it was observed that where the sampling has not been done properly and not in conformity to the prescribed specifications, such test reports are vitiated and unreliable. The relevant portion of the judgment is reproduced below:

“We also find that the test reports are vitiated and not reliable as sampling has been done improperly and not in conformity to the prescribed



specifications. We further find that there is miscarriage of justice by denying the prayer for retest.

We further hold that in the facts of the present case there is no scope for applying preponderance of probability or the principle of probability, as there are explicit rules and or instructions laid down for classification. We also hold that the Test reports relied upon by Revenue are inconclusive.

40. In view of our findings we allow the appeals and set aside the impugned order. The goods under import are to be classified as per CTH heading claimed/declared by the appellant in the bills of entry. Accordingly, we hold that rejection of transaction value is also bad and thus, declared value has to be accepted. Redemption fine and penalties on the appellants are also set aside.”

(Emphasis Supplied)

3.27 Similar observations were made in the case of Sachdeva & Sons, Amritsar (Supra) [Para 30]. Reliance here is placed on the decision in the matter of Commissioner of Central Excise, Delhi v. Exportec India Exports - 2015 (323) ELT 131 (P&H) wherein the Hon'ble High Court upheld the decision of the Hon'ble Tribunal, holding that non-adherence to the procedure for testing is a ground for rejection of test reports given by CRCL. This view was maintained by Hon'ble Supreme Court in 2015 (323) ELT A27 (SC).

3.28 Similar principle has been upheld in the case of Rajkamal Industrial Pvt. Ltd. v. C.C.-Kandla 2021-VIL-485-CESTAT AHM, Thus, it is abundantly clear that drawing of sample and testing should be as per the prescribed methodology and in absence of the same, the test reports cannot be relied upon. B.25. Hence, it is submitted that in absence of any observation on the method of drawing sample, the CRCL test report cannot be relied upon.

3.29 At the outset, it is submitted that while carrying out the export of parboiled rice, the Appellant takes all reasonable steps to ensure that the quantity of broken rice in the cargo does not exceed 5%. From placing the correct order with the rice miller to carrying out inspection of every consignment by their employees before the actual export of goods, the Appellant leaves no stone unturned to ensure that the parboiled rice adheres to the specifications of the export order as well as standards. Therefore, it was shocking for the Appellant when the Department issued the Letter dated 03.03.2023 intimating the results



of the CRCL Test Report that the quantum of broken rice in the sample exported by the Appellant had been found above the maximum limit (34.66%). Further, the SCN also did not provide any reasons whatsoever for not considering the request of the Appellant for carrying out the re-testing of the sample.

3.30 In the Personal Hearing dated 24.04.2024, the Appellant once again made a request for re-testing of the sample. Towards rejecting such request, the Ld. Addl. Commissioner has placed reliance on Circular No. 30/2017 dated 18.07.2017 at Para 14 of the Impugned Order. The said Circular provides that an Appellant may make a request to the Additional/Joint Commissioner of Customs for re-test within 10 days of receipt of communication of the test results. The Ld. Addl. Commissioner has noted that the request for re-testing made by the Appellant is not acceptable since it has been made after issuance of Show Cause Notice and after receiving Test Report on 03.03.2023. In this regard, the relevant portion of the Circular quoted by the Ld. Addl. Commissioner is reproduced below:

*"Subject: Detailed guidelines for testing of samples
- Regarding*

2. India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting on opportunity/or a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding. Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed:

b. In case the importer or his agent intends to request the Additional/Joint Commissioner of Customs (or a re-rest, then the same shall be mode in writing to the said officer within a period of ten days (rom the receipt Of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so (or reasons beyond his control."

..... (Emphasis supplied)



3.31 On reading the above guidelines, it can be clearly understood that the time limit of 10 days for requesting for re-testing of the samples has been prescribed in the case of import of goods. As the instant case pertains to export of goods, the guidelines prescribed in the said Circular are not applicable. Therefore, there is no cogent reason for denial of the request for re-testing of the sample of the Appellant's export cargo. Further, even if it were to be interpreted that the prescribed guideline is also applicable in the cases of export of goods, non-adherence of the timeline can be said to be a mere procedural lapse which cannot lead to denial of the substantive right of re-testing. The Appellant relies on the below case laws wherein it has been held that substantive benefit cannot be denied merely on the ground of a procedural lapse:

- Kamakhya Steels (P) Ltd. v. CCE, 2000 (121) ELT 247
- Dell International Services India Pvt. Ltd. v. The Commissioner of Central Excise (Appeals), 2010 (17) S.T.R. 540
- Bharat Berg Limited v. Commissioner of Central Excise - 1996 (88) ELT 172 (Tri).
- State of Orissa v. M.A. Tulloch and Co. AIR 1966 SC 365

3.32 By way of submissions in Grounds of this Appeal, it has been elaborated as to how the CRCL Test Report No. 9679 dated 28.02.2023 is inconclusive and unreliable. Further, it has also been explained as to how the method adopted by the Department's laboratory is not as per the industry standards for testing of broken rice. Also, when the Chemical Examiner has himself admitted about the lack of proper facility for carrying out the testing, then ideally, in terms of Circular No. 46/2020 - Customs dated 15.10.2020, the sample should've been sent to a Government laboratory where the facility for carrying out the appropriate tests was available, but no such efforts were made. With the above background and the test report being the only evidence relied upon to allege misclassification, the Department should have suo-motu carried out the re-testing of the sample of the cargo exported, even without the Appellant making any request for re-testing. On the contrary, the denial of re-testing without giving any cogent reasoning and confirming the demand straightaway on the basis of a single, unreliable report amounts to denial of justice to the Appellant.

3.33 In this regard, reference is made to Chapter 11 of the CBEC Old Manual which inter-alia governs procedure for draw and accounting of samples,



quantity of samples, procedure for testing and re-testing of samples etc. At Para 8.10, it has been clearly provided that re-testing of a sample in an outside laboratory may be allowed. The said provisions can be said to carry a persuasive value. Placing reliance on the above Circular, in the following decisions it has been held that denial of statutory right of retesting amounts to violation of the principles of natural justice:

- Katyal Industries v Union of India 2017 (346) E.L.T 218 (All)
- Kaipan Pan Masala Pvt. Ltd. v Commissioner of CGST & C.Ex, Bhopal 2020 (372) E.L.T. 145 (Tri. - Del.)

In view of the above, it is submitted that the sample of cargo exported by the Appellant deserves to be re-tested.

3.34 The Adjudicating Authority has alleged in the impugned Order that on the basis of the Test Report, the goods need to be reclassified under CTH 1006 4000 which covers "Broken Rice". At this point, reference is made Test Memo No. 174 pertaining to Shipping Bill No. 7663036. In the said Test Memo, under the section "FOR OFFICE USE ONLY", the Superintendent of Customs had written the Test Query as follows — (1) "Whether Goods are Parboiled Rice or otherwise?". The said Test Memo was signed by the Superintendent of Customs.

3.35 As per the instructions of the said Test Memo, the Chemical Examiner issued the Test Report No. 9679 dated 28.02.2023 which first gave the composition of sample and then provided its Notes/Comments. Under the composition section, the Chemical Examiner noted that the percentage of Broken Grains was 34.66%. However, in the Notes and Comments section of the Test Report below the composition section, the final findings of the Chemical Examiner were mentioned. The final findings stated that "Based on the physical appearance, forms and analytical findings, it may be considered as Parboiled Rice. However, other tests including microbiological test could not be ascertained for want of testing facility."

3.36 It is submitted that if the final findings of the Chemical Examiner states that the sample may be considered as Parboiled Rice, then there is no basis for the Ld. Additional Commissioner to reclassify the product as Broken Rice. The Order of the Additional Commissioner to reclassify the sample as Broken Rice is contrary to the final findings of the Chemical Examiner which



provides that such sample is Parboiled Rice. Further, the final findings of the Chemical Examiner to consider the sample as Parboiled Rice was provided by the Chemical Examiner after considering all the aspects including the composition of the sample which contained alleged Broken Rice as 34.66%. It is submitted that without challenging the final findings of the Test Report to consider the sample as Parboiled Rice, the Adjudicating Authority cannot propose to reclassify the product as Broken Rice. Consequently, the impugned order deserves to be set aside on this ground itself.

3.37 It is submitted that the Adjudicating Authority has ordered to reject the classification undertaken by the Appellant and classify the goods as 'Broken Rice' under CTH 10064000 solely on the basis of the CRCL Test Reports, which inter-alia, analyses that the samples received is composed of 34.66% and 28.40% broken grains respectively. The impugned Order has also levelled an allegation that the Appellant has resorted to misclassification and mis-declaration of the export cargo in order to evade payment of export duty/cess leviable on export cargo. Even if assuming that the CRCL Test Report is correct, then also merely because the broken rice percentage is 34.66%, which is above certain prescribed standard, it cannot be said that the entire quantity of goods needs to be re-classified as "broken rice". The fact still remains that the major quantity of rice is still parboiled rice.

3.38 Even the CRCL test report concludes that the sample is to be considered as "Parboiled Rice". The Order has not given any reason or rule / provisions which provides that if broken rice percentage is above a particular limit, the entire consignment has to be re-classified as broken rice. Hence, the order for re-classification of products as broken rice is contrary to the CRCL test report and without any legal basis. In view of the above, the order to reject the classification of the goods and reclassify them under a different CTH deserves to be set aside.

3.39 It is submitted that Department has ordered to reclassify the impugned goods exported by the Appellant as 'Broken rice' classifiable under CTH 10064000 solely on the basis of the Test Report by the Department which concludes that the goods comprise 34.66% and 28.40% broken rice without providing any reasoning or method for arriving at the conclusion. The Appellant submits that when the Department proposes to change the classification of the goods, the onus is always on the Department to provide reasons for the re-



classification. The Appellant in this regard relies on the decision of the Hon'ble Supreme Court in case of Hindustan Ferodo Ltd. v. CCE, Bombay, reported in 1997 (89) E.L.T. 16 (S.C.). The Hon'ble Supreme Court in this case was concerned with the classification of the "rings punched out of asbestos boards". The authorities held that the same is classifiable in Tariff Item No. 22(F), while the assessee contended that the "rings punched out of asbestos boards" were not marketable and were not classifiable under the said Tariff Item and in any case, they were classifiable under Tariff Item No. 34(A). In the earlier stage of appeal, the Tribunal rejected the appeal filed by the assessee-appellant as reported in 1993 (30) E.L.T. S02. The Hon'ble Supreme Court, however, set aside the order of the Tribunal and held that that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue, and as the Revenue led no evidence, the onus was not discharged by them.

3.40 The Department ought to produce evidence in the form of reasoned test reports as required under the laws in support of their proposal to re-classify the impugned goods. The Appellant further places reliance on the following case laws:

- Commissioner of Central Excise, Chennai-IV v. Hindustan Lever Ltd., 2015 (323) E.L.T. 209 (S.C.)
- H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh, 2006 (197) E.L.T. 324 (S.C.)
- Collector of Customs, Calcutta v. Hindalco Industries Ltd., 2007 (217) E.L.T. 343 (Cal.)
- Puma Ayurvedic Herbal (P) Ltd. v. Commissioner of Central Excise, Nagpur, 2006 (196) E.L.T. 3 (S.C.)

3.41 In addition to the above, it is also submitted that is a settled position of law that mere testing of the sample without providing the nature of test carried out for the ascertainment of quantities and without analysing the existing literature, the Department cannot discharge their burden of proof. A plethora of case laws have established this position. In the case of Sunrise Traders, Jai Durga Impex v. Collector of Customs, 2022 (1) TMI 468 - CESTAT AHMEDABAD the Tribunal while holding the entire case of the revenue as unsustainable, held as follows:




"Another reliance of the department is on the report of ATIRA (Ahmedabad Textile Industry Research Association) dated 27.03.2017 states that the actual strength of the warp and weft used in making fabric cannot be ascertained. If we go by all the above reports mentioned except for the report dated 21.03.2017 which classifies the goods as quilt cover all the other reports are inconclusive. If at all any report to be relied upon it is report dated 21.03.2017 which was brushed aside as tampered by the department without giving any details who tempered with the report and what action was taken. Even if we accept the corrected report and all other reports they are all inconclusive and instead of relying upon them they should have been sent for retesting which the commissioner categorically denied stating that he does not find any cogent reason to grant resampling and retesting at this stage as samples were tested at two different recognised institutions and expert committee. Therefore, the only conclusion that could be drawn from the above facts is department has not discharged their burden of proof and the classification of the department should be rejected as held by Hon'ble Supreme Court and CESTAT in various decisions; In case of UIO vs Garware Nylons Ltd. 1996 (87) E.L.T. 12 (S.C.) held: "The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the authority first adjudicating."

(Emphasis Supplied)

3.42 The above principle regarding the non-satisfaction of the Burden of Proof by the department has also been upheld in the following case laws:

- Indo Australian Humigrow System v. CCE Delhi, 2018 (7) TMI 162
- Kantilal Manilal & Co. v. Collector of Customs, 1990 (8) TMI 246
- Alpha Forum Pvt. Ltd. v. CCE Pune I, 2018 (7) TMI 9
- Mahindra Sintered Products Ltd. v. CCE, Pune, 1994 (2) TMI 199 – CEGAT NEW DELHI.

In view of the above, it is submitted that the order to re-classify the impugned goods under CTH 1006 4000 is liable to be set aside.



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3.43 It is submitted that the Ld. Addl. Commissioner has ordered for confiscation of the goods covered under the Shipping Bills as per the provisions of Section 113 (d) and Section 113(i) of the Customs Act, 1962. It is submitted that Section 113 of the Customs Act, 1962 provides for confiscation of the goods which are attempted to be exported, contrary to any prohibition imposed by the Act and which are intentionally or knowingly exported. Further, it is also submitted that Section 113(d) is applicable only when any goods are attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibitions imposed by or under the Customs Act, 1962 or any other law for the time being in force. Goods already exported cannot be confiscated Without prejudice to the above, it is submitted that as the goods have already been exported, the question of confiscating them does not arise.

3.44 In this regard, reference is made to the case in Global Impex v Commissioner of Customs, India 2018 (364) E.L.T 807 (Tri. - All) wherein it was observed that there is no merit in confiscating the goods that have already been exported, especially when request for retesting the samples by some other laboratory was made which was rejected without any plausible reasons. The Ld. Addl. Commissioner has ordered to confiscate the goods exported by the Appellant. However, as the goods have already, been exported provisionally under Bond, a redemption fine of Rs. 13,00,000/- has been imposed. It is well settled that question of redemption fine does not arise, when the goods are not available for confiscation. In this regard, reliance is placed on the following judgments:

- The Principal Commissioner of Customs v Kishan Gadhesariya 2022 (4) TMI 316
- CC Vs. Finesse Creation Inc., - 2009 (248) ELT 122 (Bom.)
- Maintained in the Hon'ble Supreme Court reported at 2010 (255) ELT A120 (SC)
- CC Vs. National Leather Cloth Manufacturing - 2015 (321) ELT 135 (Bom.)
- Hon'ble Bombay High Court Order dated 22.09.2009 in the case of CC (I) Vs. Rishi Ship Breakers
- Shiv Kripa Ispat Pvt. Ltd. Vs. CCE & CC - 2009 (235) ELT 623 (T-LB)
- CC Vs. Raja Impex - 2008 (229) ELT 185 (P&H)

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- CC Vs. G.M. Exports - 2008 (226) ELT 571 (T) Affirmed by the Hon'ble Karnataka High Court at 2012 (279) ELT 493 (Kar.)

In view of the above, the order for confiscation of the goods and imposition of redemption fine deserves to be set aside.

3.45 The impugned Order has imposed penalty of Rs. 6,50,000/- under Section 114(i) of the Customs Act, 1962 on the Appellant. It is submitted that the penalty under Section 114(i) is imposable on 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, in the case of goods in respect of which any prohibition is in force under the Customs Act or any other law for the time being in force. Thus, the question of penalty arises only when the goods are liable to confiscation. For the reasons mentioned in Grounds above, the goods are not liable for confiscation. Accordingly, penalty cannot be imposed. By reasons of the submissions made herewith, it also cannot be said that the Appellant abetted the doing or omission of an act in any manner, which rendered the goods liable to confiscation. In the case of Trade Wings Ltd. Vs. CC - 2009 (243) ELT 439 (Tri.-Mumbai), Hon'ble Tribunal held that mere lack of care and diligence by the Appellants is not sufficient to pin them with the charge of abetment. Similarly, in the case of CC (EP) Vs. P.D. Manjrekar [2009 (244) ELT 51 (Bom.)], the Hon'ble Bombay High Court held that in case of abetment, Revenue has to prove knowledge on the part of the assessee. No such proof has been furnished by the Department in the present case. In light of the above, no penalty is payable by the Appellant. The Appellants submit that the goods exported by them have been correctly classified as 'parboiled rice' under the CTH 10063010 and they have not resorted to any 'misclassification of export cargo'.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 02.07.2025, following the principles of natural justice wherein Shri Shreyas Agrawal, Advocate, appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.



DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeal which are as follows:

- (i) Whether the CRCL Test Reports are conclusive and reliable for re-classifying the exported rice as "Broken Rice" (CTH 10064000).
- (ii) Whether the denial of the Appellant's request for re-testing of samples was justified.
- (iii) Whether the Adjudicating Authority's re-classification of the entire quantity of rice as "Broken Rice" (CTH 10064000) is legally sustainable.
- (iv) Whether the confiscation of already exported goods and the imposition of redemption fine are legally permissible.
- (v) Whether the imposition of penalty on the Appellant under Section 114(i) of the Customs Act, 1962, is justified.

5.2 The Appellant claims that Test Report No. 1637 was never provided, and no specific personal hearing was granted for the second consignment. While the principles of natural justice do require disclosure of relied-upon documents and an opportunity of being heard, the facts indicate otherwise. The SCN dated September 20, 2023, clearly mentions both Test Reports, including No. 1637, and provides a summary of its findings. This indicates that the Appellant was put on notice regarding the findings of both reports. Furthermore, the SCN is a consolidated notice for both Shipping Bills. The Notice for Personal Hearing dated February 27, 2024, though it refers to SB No. 7663036, also states that the Appellant may appear to represent "as to why the goods covered under the above mentioned Shipping Bill No. shall not be confiscated and penalty shall not be imposed upon you under relevant sections of the Customs Act, 1962". The comprehensive nature of the SCN and the subsequent personal hearing, where the Appellant could have raised all issues pertaining to both consignments,



implies that a reasonable opportunity was afforded. The Appellant did not specifically highlight the non-receipt of the full report of consignment 2 in their initial reply dated 10.05.2023 which was only for consignment 1. By the time the SCN was issued covering both consignments, the appellant was fully aware of the facts.

5.3 The cases cited by the Appellant, such as Agrim Chemicals and I.E. Vittal, primarily deal with situations where the adverse material was not confronted at all or complete copies were not supplied, thus amounting to denial of proper opportunity. In the instant case, the SCN itself communicated the core findings of both test reports. The Appellant had the opportunity to request full copies of the documents they wished to rely upon or challenge during the SCN reply or the subsequent personal hearing. Their failure to specifically demand the full report for Consignment-2 or request a separate hearing for it at the relevant time, indicates that the opportunity was available, but perhaps not fully utilized. No violation of natural justice is found, as the Appellant was duly informed of the adverse findings in the SCN for both consignments and was granted an opportunity for a hearing where they could have raised all relevant contentions.

5.4 The Appellant contends that CRCL Test Report No. 9679 is inconclusive due to the stated inability to perform microbiological tests. They also allege non-adherence to Circular No. 46/2020-Customs regarding referral to other labs and lack of clarity on testing methodology and sampling procedure. The CRCL report concluded based on "physical appearance, forms and analytical findings" that the sample "may be considered as Parboiled Rice (broken 34.66%)". The purpose of the test was primarily to determine the broken percentage, which was clearly ascertained. The absence of a microbiological test does not invalidate the physical and analytical findings related to broken percentage, which is the crucial factor for classification as "broken rice" under the Customs Tariff. The phrase "may be considered as Parboiled Rice" with a high broken percentage still points to the physical characteristics as found. The onus is on the exporter to ensure the goods meet the declared classification and specifications. The test memo clearly indicates the query was "Whether Goods are Parboiled Rice or Otherwise?". The response provided was "Parboiled Rice (broken 34.66%)" and "Parboiled Rice (broken 28.40%)". This directly answers the query by quantifying the broken percentage, which then allows for re-classification as "broken rice" based on the established threshold.




5.5 While Circular No. 46/2020-Customs provides guidelines for testing, its non-adherence in terms of referring to other labs, while noted, does not automatically invalidate a test report unless it demonstrably renders the primary finding (broken percentage) incorrect or unscientific. The Appellant has not provided an alternative test report contradicting the broken percentage. The Adjudicating Authority has discretion in relying on available evidence. The CRCL Test Reports, despite the noted limitations, provide a clear percentage of broken grains. This quantitative finding is sufficient for the Adjudicating Authority to determine the correct classification based on trade policy definitions of "broken rice."

5.6 The Appellant argues that Circular No. 30/2017 applies to imports, not exports, and that timelines are directory. The Adjudicating Authority denied re-testing as the request was made after the SCN and initial test report communication. While Circular No. 30/2017 primarily focuses on imports, its underlying principle regarding the timeliness of re-testing requests (within 10 days of communication of test results) is a reasonable procedural safeguard. Allowing re-testing requests indiscriminately, long after initial results and even SCNs, would lead to undue delays in finalization of proceedings. The Appellant received the test report on March 03, 2023, but requested re-testing in their reply dated May 10, 2023. This falls outside the 10-day window. Furthermore, the Adjudicating Authority correctly noted that the request was made after the issuance of the SCN. The discretion to allow re-testing lies with the adjudicating authority, and in cases of delayed requests without sufficient cause (beyond mere oversight), denial can be justified.

5.7 The denial of re-testing by the Adjudicating Authority is upheld as the request was not made within the reasonable stipulated time frame, and the Appellant did not provide compelling reasons for this delay beyond what was already factored into the adjudicator's discretion.

5.8 The Appellant argues that reclassifying the entire quantity as "Broken Rice" is unwarranted since the major portion is still parboiled rice, even with a high broken percentage, and the CRCL report itself refers to it as "Parboiled Rice". The DGFT Notification No. 31/2015-2020 dated September 08, 2022, prohibits the export of "broken rice" under CTH 10064000. Trade Notice No. 18/2022-23 dated October 04, 2022, defines what constitutes "broken rice"



in terms of permissible limits. If the percentage of broken rice found (34.66% and 28.40%) exceeds these permissible limits, then the entire consignment, irrespective of whether it was initially "parboiled," fundamentally changes its character to "broken rice" for trade policy purposes. The nomenclature "Parboiled Rice (broken X%)" in the test report simply describes the physical composition of the tested sample, but the ultimate classification for export policy depends on whether that composition falls within the definition of "broken rice" as per trade regulations. The Adjudicating Authority explicitly found that "the broken percentage of rice was above the permissible limit as per Trade Notice No.18/2022-23 Dated 04.10.2022".

5.9 The re-classification is based on the legal definition of "broken rice" as per trade policy, not merely on the descriptive term in the test report. If the broken percentage exceeds the threshold for "broken rice," then the entire quantity correctly falls under that prohibited category.

5.10 The Appellant argues that the Department failed to discharge its burden of proof as the test reports are unreasoned and unreliable. The department has presented CRCL test reports, which are official documents, detailing the exact percentage of broken grains. This numerical finding, when read in conjunction with the DGFT Notification prohibiting "broken rice" and the Trade Notice defining the permissible limits, forms the basis of their re-classification. While the Appellant questions the methodology, they have not provided any contradictory evidence or an alternative test report. The onus shifts once prima facie evidence is presented. The Department has discharged its burden of proof by providing quantitative test results that, when applied to relevant notifications and trade notices, establish the goods as "broken rice" beyond permissible limits.

5.11 The Appellant contends that goods already exported cannot be confiscated, and therefore, no redemption fine can be imposed, citing various judgments. While it is true that physical confiscation of already exported goods is not possible, the legal fiction of "deemed confiscation" or the liability for confiscation persists. Section 113 of the Customs Act, 1962, states that goods "shall be liable to confiscation" if certain conditions are met. The Adjudicating Authority has found that the goods were liable to confiscation under Section 113(d) and 113(i) of the Customs Act, 1962 due to being prohibited goods (broken rice) and mis-declared. Since the goods are no longer available, Section 125 of



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the Customs Act, 1962 allows for imposition of a fine in lieu of confiscation. The term "redemption fine" is a mechanism to deal with goods that were liable for confiscation but cannot be physically seized. The argument that redemption fine cannot be imposed if goods are not available for confiscation has been debated in various forums, but its imposition as a penalty for acts or omissions that rendered goods liable to confiscation. The fact that the goods were allowed provisional export under a bond signifies that the final liability was yet to be determined, making them amenable to subsequent action, including fine. The imposition of fine in lieu of confiscation under Section 125 is legally justified, as the goods were found to be prohibited and mis-declared, rendering them liable to confiscation under Section 113 of the Customs Act, 1962.

5.12 The Appellant argues that penalty under Section 114(i) of the Customs Act, 1962 is not imposable if goods are not liable for confiscation and that "knowledge" for abetment is not proven. As discussed, if the goods are found liable to confiscation under Section 113 of the Customs Act, 1962 (which they are, due to being prohibited and mis-declared), then Section 114(i) of the Customs Act, 1962 is directly attracted. The Appellant's act of mis-classifying the goods, which were found to be prohibited "broken rice", directly constitutes an act that "would render such goods liable to confiscation". The intent to evade prohibition can be inferred from the large deviation in broken percentage from the declared 5% to over 28-34%. This indicates more than a mere oversight. The imposition of penalty under Section 114(i) of the Customs Act, 1962 is confirmed, as the Appellant's actions directly led to the export of prohibited goods.

5.13 The Adjudicating Authority's findings regarding the re-classification of the exported rice as "Broken Rice" based on the CRCL test reports, and the subsequent implications for prohibition under DGFT Notification, are robust. The arguments related to violation of natural justice and denial of re-testing are not strong enough to overturn the substance of the findings, especially given the opportunities provided and the legal provisions in force. The liability for confiscation and the consequent imposition of fine in lieu of confiscation are also sustainable. The penalty imposed on the Appellant under Section 114(i) of the Customs Act, 1962 is justified due to their involvement in the mis-declaration and export of prohibited goods.

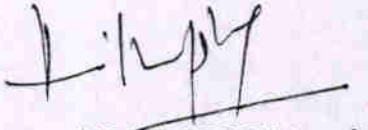
6. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:




- i. The impugned Order-in-Original No. MCH/ADC/MK/71/2024-25 dated June 13, 2024, is upheld in its entirety.
 - ii. The declared classification of the exported goods under CTH 10063010 is rejected, and the goods are re-classified under CTH 10064000 for Shipping Bill Nos. 7663036 dated February 09, 2023, and 9787164 dated May 05, 2023.
 - iii. The confiscation of goods having FOB value of Rs. 42,08,836/- and Rs. 82,61,738/- covered under the said Shipping Bills under Section 113(d) and 113(i) of the Customs Act, 1962, is upheld.
 - iv. The imposition of a redemption fine of Rs. 13,00,000/- (Rupees Thirteen Lakhs only) in lieu of confiscation is upheld.
 - v. The imposition of penalty of Rs. 6,50,000/- (Rupees Six Lakhs Fifty Thousand only) under Section 114(i) of the Customs Act, 1962, is upheld.
7. The appeal filed by M/s. R.V. Exports Pvt. Ltd. is hereby rejected.



सत्यापित/ATTESTED
अधीक्षक/SUPREINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD


(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-119/CUS/MUN/2024-25

Date: 01.01.2026

By Speedpost /E-Mail

To,
M/s. R.V. Exports Pvt. Ltd.
A18, Nityanand Nagar,
Queens Road, Vaishali Nagar,
Jaipur, Rajasthan - 302021

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.