

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425</p>	
A	File No.	CUS/APR/INV/391/2024-Gr 2-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/138/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	13.09.2024
E	Noticee/Party/Importer/ Exporter	M/s. Sieben Spoons Foods Private Limited, C-673, New Subzi Mandi, Azadpur, Delhi-110033
F	DIN No.	20240971MO000000D6BE

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“ सीमा शुल्क आयुक्त (अपील),
 चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

OIO No. - MCH/ADC/MK/138/2024-25
DIN - 20240971MO000000D6BE

Brief Facts of the case:

On the basis of Intelligence gathered by the officers of Central Intelligence Unit (CIU), Mundra Custom House, cargo covered under Bill of Entry No. 8102754 dated 01.10.2023 filed by M/s. Sieben Spoons Foods Private Limited, C-673, New Subzi Mandi, Azadpur, Delhi-110033(**'Importer'** for the sake of brevity) through their CHA- M/s. Sunway Logistics declaring the goods as "Watermelon Kernal Seeds Prepared" and classifying the same under CTH 20081930 was put on hold for further examination.

EXAMINATION OF THE GOODS AND INVESTIGATION CONDUCTED:

2 . 1 Examination of the cargo covered under Bill of Entry No. 8102754 dated 01.10.2023 and stuffed in Container No. SZLU9175342 was done by the officers of the CIU, Custom House, Mundra under Panchnama dated 05.10.2023 drawn at Saurashtra, CFS, MPSEZ, Mundra. During the course of examination, it was found that the Container was a referred Container and the imported goods are packed in polyethene bag having weight 10 kg (approx.) and two polyethene bags are packed in a corrugated box. One FSSAI sticker was found affixed on all corrugated boxes where description of goods was mentioned as 'Water Melon Kernal Seeds Prepared' along with other details like FSSAI Licence No., Country of Origin, Packing Date, Lot No. and Name of the Exporter and Name of the Importer were also found mentioned.

2.2 During examination of the cargo, one representative sample was drawn from the imported goods to ascertain the exact nature and description of the goods. The sample was forwarded to the FSSAI, Mundra vide letter Test Memo No. 01 dated 06.10.2024 for the query ***"whether the sample is watermelon seeds or otherwise, whether the sample is produced as a result of some preparation/process/preservation, whether the sample is roasted or dried or prepared with any other process and to confirm the moisture content of the sample"***.

2.3 The test report in the matter was received vide report no. HTL/KDL/231009006/N dated 16.10.2023 from M/s Hitech Healthcare Laboratory and research Centre, Ahmedabad, a NABL accredited and FSSAI notified laboratory under Food and Safety Standard Act, 2006. Vide the aforesaid report, the query raised vide the test memo dated 06.10.2024 as under:

"Sample is dehulled watermelon seed, sample is process by dehulled (removal of outer coat),

The salt content in the sample is 1.03% which indicate sample is processed with salt solution the moisture content in the sample found to be 5.20%."

2.4 On going through the analysis report, it appeared that the goods covered under Bill of Entry No.8102754 dated 01.10.2023 were dehulled watermelon seeds and prepared by removal of outer coat. The essential character of the impugned goods were watermelon seed, which were for human consumption and thus, appeared classifiable under the CTH 12077090 (Melon Seeds-others). The importer has wrongly classified it under CTH-20081930 (Other nuts, otherwise prepared or preserved), as the said goods were not the nut and further there was no preparation involved for classifying it under the declared heading.

2.5 In view of the above, the imported goods, i.e. Watermelon Seeds appeared as classifiable under CTH-12077090 which was a restricted commodity as per import policy prescribed by the DGFT but the importer misclassified the same under CTH-20081930 to circumvent the import restrictions in as much as the importer was not having mandatory license to import the impugned goods. Thus, the said goods were found liable for confiscation under section 111 (d) & 111(m) of the Customs Act, 1962. Accordingly, the imported goods, having declared assessable value of **Rs.17,78,532/-** was placed under seizure under section 110 of the Customs Act, 1962 vide seizure memo dated 18.10.2023 and handed over to the custodian of the Saurashtra CFS vide Supurtnama dated 18.10.2023.

2.6 The importer vide letter dated 19.10.2023 has requested for provisional release of the consignment as the cargo was perishable in nature and they were incurring heavy detention/demurrage charges. The request of the importer for provisional release of the goods was forwarded to the Assessment Group, Custom House Mundra vide letter dated 19.10.2023. In response, the assessment group vide letter dated 26.10.2023 communicated to the CIU Section that provisional release of the impugned goods was approved by the competent authority upon execution of bond of full value and Bank Guarantee of **Rs. 2.5 lakhs**. Thereafter, NOC to release the said consignment on provisional basis was granted by the CIU Section vide letter dated 26.10.2023.

CLASSIFICATION OF THE IMPORTED GOODS :

3.1 It is pertinent to mention here that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GRI) specified in the Import Tariff are in accordance with the GRI specified in

the HSN.

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; **for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:**

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential

character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration

3.2 The importer has classified the impugned item under CTH-20081930 which is meant for Preparations of vegetables, fruit, nuts or other parts of plants. For ease of reference, relevant chapter headings of CTH- 20 is reproduced hereunder:

CHAPTER 20: Preparations of vegetables, fruit, nuts or other parts of plants

		2008	FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED OR INCLUDED
		-	Nuts, ground-nuts and other seeds, whether or not mixed together
2008 19	--		Other, including mixtures
2008 19 30	---		Other nuts, otherwise prepared or preserved

3.3 However, in the instant matter, it is clear that the impugned goods are 'Watermelon Kernal Seeds Prepared' which is more appropriately falling under the group of items classifiable under Chapter-12 as elaborated hereinunder:

		CHAPTER 12:	Oil seeds and oleaginous fruits, miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder
1207			Other oil seed and oleaginous fruits, whether or not broken
1207 70	-		Melon seeds
1207 70 10	---		of seed quality
1207 70 90	---		other

3.4 In addition, reference is also invited towards General Note of Heading 12 as under:

GENERAL

Headings 12.01 to 12.07 cover seeds and fruits of a kind used for the extraction (by pressure or by solvents) of edible or industrial oils and fats, whether they are presented for that purpose, for sowing or for other purposes. These headings **do not**, however, **include** products of **heading 08.01 or 08.02**, olives (**Chapter 7 or 20**) or certain seeds and fruits from which oil may be extracted but which are primarily used for other purposes, e.g., apricot, peach or plum kernels (**heading 12.12**) and cocoa beans (**heading 18.01**).

The seeds and fruits covered by the heading may be whole, broken, crushed, husked or shelled. They may also have undergone heat treatment designed mainly to ensure better preservation (e.g., by inactivating the lipolytic enzymes and eliminating part of the moisture), for the purpose of de-bittering, for inactivating antinutritional factors or to facilitate their use. However, such treatment is permitted **only if** it does not alter the character of the seeds and fruits as natural products and does not make them suitable for a specific use rather than for general use.

The headings **exclude** solid residues resulting from the extraction of vegetable oil from oil seeds or oleaginous fruits (including defatted flours and meals) (**heading 23.04, 23.05 or 23.06**).

3.5 From the plain reading of descriptions and GRI and Chapter Notes, as discussed above, it appears that the imported goods declared as 'Watermelon Kernal Seeds Prepared' and identified as '**Dehulled Watermelon Seed**' vide FSSAI analysis report, is more appropriately classifiable under CTH-12077090 as '**Other Melon Seeds**'. Thus, it appears that the importer has wrongly classified the imported item under 20081930 (Other nuts, otherwise prepared or preserved).

IMPORT POLICY CONDITION:

4.1 Para 2.07 of the Foreign Trade Policy-2023 (FTP) prescribes the Principles of Restrictions by the DGFT and as per this clause, the *DGFT* may, through a Notification, impose '**Prohibition**' or '**Restriction**' condition on import of any goods.

4.2 Further, as per para 2.09 of the FTP, the Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, Actual User alone may import such good(s) unless Actual User condition is specifically dispensed with by DGFT.

4.3 Further, as per para 2.10 of the FTP, every Authorisation shall, inter alia, include either all or some of the following terms and conditions (as applicable in terms of the para under which the Authorisation has been issued), in addition to such other conditions as may be specified: (a) Description, quantity and value of goods; (b) Actual User condition (as defined in Chapter 11); (c) Export Obligation; (d) Minimum Value addition to be achieved; (e) Minimum export/import price; (f) Bank guarantee/ Legal undertaking / Bond with Customs Authority/RA (as in para 2.35 of FTP). (g) Validity period of import/export as specified in Handbook of Procedures.

4.4 Here, it is pertinent to mention that vide Notification No.13/2015-2020 dated 21.06.2022 issued by the DGFT, the import of **Watermelon Seeds under ITC (HS)-12077090** is restricted subjected to the compliance of conditions prescribed in the import policy as under:

Government of India
Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Udyog Bhawan

Notification No. 13 /2015-2020
New Delhi, Dated the 21st June, 2022

Subject: - Amendment in Import Policy Condition of Water Melon Seeds under ITC(HS) Code 1207 70 90 of Chapter-12 of ITC (HS), 2022, Schedule-I (Import Policy)

S.O. (E): In exercise of powers conferred by Section 3 and section 5 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy (FTP) 2015-2020, as amended from time to time, the Central Government hereby amends the policy condition under ITC (HS) 1207 70 90 of Chapter 12 of ITC (HS) 2022, Schedule 1 (Import Policy) as under:

ITC(HS) Code	Description	Existing Import Policy	Revised Import Policy	Existing Policy Condition	Revised Policy Condition
12077090	Melon Seeds Other	Restricted	Restricted	Imports subject to Policy Condition (4) of the Chapter.	<p>i. Imports subject to Policy Condition (4) of the Chapter.</p> <p>ii. Import Policy of Water Melon Seeds is "Free" till 30.09.2022</p> <p>iii. Shipments of Water Melon Seeds made by 30.09.2022 from the exporting countries may be allowed for clearance at Indian Customs port, provided that Bill of Entry is filed and such goods are handed over to the Customs authority for examination by 31.10.2022</p> <p>iv. The imports of Water Melon Seeds shall be permitted from Kandla (INIXY1) and Mundra (INMUN1) Ports only.</p>



4.5 Furtehrmore, vide Notification No.13/2023 dated 08.06.2023 issued by the DGFT, license for import of **Watermelon Seeds under ITC (HS)-12077090** is required to be obtained from DGFT. Relevant portion of said notification is reproduced hereinunder:

[TO BE PUBLISHED IN THE GAZETTE OF INDIA EXTRAORDINARY PART-I, SECTION-I]

Ministry of Commerce & Industry
Department of Commerce
Directorate General of Foreign Trade
Vaniya Bhawan, New Delhi

Public Notice No. 13 /2023
Dated: 8th June 2023

Subject: Import of Watermelon Seeds under ITC(HS) 12077090 of ITC(HS), 2022 Schedule-I (Import Policy) for the period up to 31.10.2023

S.O(E): In exercise of powers conferred under paragraph 1.03 and 2.04 of the Foreign Trade Policy, 2023, the Directorate General of Foreign Trade hereby notifies the procedure for import of Watermelon Seeds under ITC(HS) 12077090 for the period of up to 31.10.2023 as follows –

1. As per the recommendation from the concerned ministry, the imports of Watermelon Seeds **up to 31.10.2023** shall not exceed **35,000 MTs** and shall be allowed on **Actual User basis**. Accordingly, DGFT invites fresh applications for Licence for Restricted imports for Watermelon Seeds with effect from the date of this Public Notice and **not later than 15.06.2023** as follows –

- i. Applications where the date of issuance of their Importer-Exporter Code (IEC) is on or after the date of this Public Notice shall not be considered.
 - ii. The applications shall be considered on Actual User basis to processors only, based upon their own processing capacity and past imports of Watermelon Seeds.
 - iii. A valid FSSAI Licence issued before the date of the Public Notice indicating the processing capacity is required to be provided.
 - iv. A valid CA Certificate certifying the overall turnover of the applicant as well as the applicant's turnover for watermelon seeds is required to be provided.
 - v. Only one application against one IEC shall be considered.
 - vi. In case of any mis-declaration, the applicant shall not be considered for the current allocation and shall be disallowed from subsequent such allocations for the next 2 years.
2. The quantity of imports permitted to each application shall be decided by the Exim Facilitation Committee (EFC) as per para 2.48 of the HBP 2023. The EFC, while examining the



applications will take into considerations; inter alia, the annual processing capacity and imports of Watermelon seeds in 2020-21, 2021-22 and 2022-23.


3. 30% weightage shall be given to the average import of watermelon seeds by the applicant(s) in 2020-21, 2021-22 and 2022-23. 70% weightage shall be given to the applicant's processing capacity.

4. Any eligible applicants are entitled for allocation based on the weightage specified. DGFT may however specify a floor and/or ceiling for the quantity(s) to be allocated, to ensure that economic quantities are allocated. Further, DGFT shall reserve the right to make any changes in the allocation process as deemed fit, at any point of time.

5. All prospective Licensees shall ensure that the import consignments against the said licences reach the Indian ports on or before 31.10.2023.

Effect of this Public Notice:

Applications are invited for licence for restricted Imports for Watermelon seeds under ITC(HS) 12077090 for import up to 31.10.2023. The last date for submission of online applications is 15.06.2023.


 (Santosh Kumar Sarangi)
 Director General of Foreign Trade &
 Ex- officio Addl. Secretary to the Govt. of India
 email: dgft@nic.in

(Issued from File No. 01/53/8/Misc/AM22/M-1/IC)

4.6 From combined reading of both the above notifications, it appears that Melon Seed and Other classifiable under CTH-12077090 is a restricted commodity and for import of the same is allowed only on the **ACTUAL USER BASIS** under license issued by the DGFT in line of Notification No.13/2023 dated 08.06.2023. Further, from the plain reading of the said notification, the importer intended to import Watermelon Seed was required to apply for license upto 15.06.2023. In the present matter, the consignment covered under the impugned BE was loaded from the loading port vide BL No.CSX23JEAMUN064721 dated 26.09.2023. Therefore, it appears that the impugned consignment was squarely covered under the purview of the above notification and license was required for import of the same. The importer was not having the DGFT license to import subjected items. However, it is noticed that the importer has classified the imported item under CTH-20081930 which is an attempt to dispel the policy conditions of the DGFT applicable on CTH-12077090. Thus, it appears that the Watermelon Seed imported without mandatory DGFT license in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods as '**restricted**' for import into India and liable for confiscation under the Customs Act, 1962.

LEGAL PROVISIONS:

5.1 As per **Section 2 (33)** of the Customs Act, 1962 '**Prohibited goods**' means any goods the import or export of which is subject to any

prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

5.2 As per Section 2 (39), '**Smuggling**', in relation to any goods, means *any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

5 . 3 **SECTION 46** of the Act, prescribes that 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.

5.4 Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under:

The following goods brought from a place outside India shall be liable for confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

5.4 Further, Section 112 of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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) ..
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;

5.5 **SECTION 124** prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(3) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(4) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

5.6 **SECTION 125** provides the Option to pay fine in lieu of confiscation as under:

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this 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 or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

OUTCOME OF THE INVESTIGATION:

6.1 From the above discussion, it appears that the M/s Siben Spoons Foods Private Limited has filed Bill of Entry No. 8102754 dated 01.10.2023 for import of Water Melon Kernal Seeds at Mundra Port. The importer has classified the imported goods under CTH-20081930 which is meant for 'Other nuts, otherwise prepared or preserved'. During examination by the CIU, Custom House Mundra and subsequent test results received from the designated lab of the FSSAI, the imported items are identified as '**Dehulled Watermelon Seed**' which are more appropriately classifiable under CTH-12077090 as '**Other Melon Seeds**' as per the principals laid down vide General Rules of Interpretations and relevant Chapter Note as discussed above.

6.2 Further, as per the DGFT's Notification No.13/2015-2020 dated 21.06.2022 read with Notification No.13/2023 dated 08.06.2023, import of Watermelon Seed CTH-12077090 is a restricted and allowed only on Actual User basis under license issued by the DGFT.

6.3 In the present case, the importer was not having the license of the DGFT as mandated vide above notification. Moreover, the importer has classified the impugned item under CTH-20081930 which is an attempt to circumvallate the policy conditions of the DGFT applicable on CTH-12077090. Thus, it appears that the Watermelon Seed imported without mandatory DGFT license in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods having declared weight of 27.00 MTs and declared assessable value as Rs. 17,78,532/- as '**restricted**' for import into India and liable for confiscation under the Section 111 (d), (m) and (o) of the Customs Act, 1962 and has thus rendered themselves liable for penal action under Section 112 (a) (i) of the Customs Act, 1962.

7. WAIVER OF NOTICE AND PERSONAL HEARING: -

The importer vide letter dated Nil received vide email dated 23.07.2023 has submitted that as per their interpretation, the subjected goods is a processed item by dehulling and salt treatment and fit for human consumption. However, as per the department contention, the imported goods fall under the CTH-12077090 (Melon Seeds-Others) and subject to import policy conditions. Since, the cargo was perishable in nature and therefore, on their request the cargo was released on provisional basis by the department on submission of Bond of full value and Bank Guarantee of **Rs. 2.5 lakhs**.

Further, the importer has requested to finalize the bill of Entry and conclude the inquiry against them. The importer has also submitted that **they do not want any SCN or PH in the matter and also ready to pay the applicable fine and penalty.**

Further, the importer has requested to impose minimum fine and penalty on them as they have already suffered a huge financial loss due to detention and demurrage charges.

8. In view of the above, as the Exporter have already requested for waiver of the show cause notice in the matter, Investigation Report vide F. No. GEN/TECH/MISC/2299/2023-Tech dated **08.08.2024** was issued by the Deputy Commissioner (SIIB), Customs House, Mundra proposing as under:

- i. The classification and description of the imported item, i.e. Water melon Kernel Seeds Prepared' vide BE No. 8102754 dated 01.10.2023 declared as CTH-20081930 is liable to be rejected and need to be reclassified under CTH-12077090 as 'Melon Seeds- Others'.
- ii. The above goods having declared value of **Rs. 17,78,532/-** need to be considered as prohibited goods in light of DGFT's Notification No.13/2015-2020 dated 21.06.2022 read with Notification No.13/2023 dated 08.06.2023 and liable for confiscation under Section 111 (d), (m) & (o) of the Customs Act, 1962.
- iii. Penalty under Section 112(a)(i) of Customs Act, 1962 is imposable upon the importer.
- iv. The Bond submitted by the importer during provisional release of the consignment is required to be enforced upon and the Bank Guarantee of Rs.2.5 lakhs submitted by the importer is required to be appropriated for recovery of fine and penalty as the case may be.

SHOW CAUSE NOTICE & PERSONAL HEARING

9. The importer vide email dated 23.07.2023 already submitted their consent to decide the matter on merit as per the test results and gave their consent to re-assess the said bill of entry and further requested

that they do not want any PH/SCN in the matter.

DISCUSSION AND FINDINGS

10. I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. The points to be decided in the instant case are as to:

- i) Whether classification of said Goods imported by the importer is liable for rejection and liable for re-classification or otherwise.
- ii) Whether goods are liable for confiscation in terms of Section 111 (d), (m) & (o) of the Customs Act, 1962 for the reason that it is being misclassified or otherwise.
- iii) Whether importer is liable for penalty under section 112(a)(i) of the Customs Act, 1962 or otherwise.

10.1 Further, as per Test Report No.HTL/KDL/231009006/N dated 16.10.2023 issued by M/s Hitech Healthcare Laboratory and Research Centre, Ahmedabad, a NABL Accredited and FSSAI notified laboratory under Food and Safety Standard Act, 2006 the **sample is dehulled watermelon seed, sample is process by dehulled (removal of outer coat), The salt content in the sample is 1.03% which indicate sample is processed with salt solution the moisture content in the sample found to be 5.20%.**

10.2 I have carefully gone through the records of the case, I find that the goods covered under Bill of Entry No.8102754 dated 01.10.2023 were dehulled watermelon seeds and prepared by removal of outer coat. The essential character of the impugned goods were watermelon seed, which were for human consumption and thus, appeared classifiable under the CTH-12077090 (Melon Seeds-others). The importer has wrongly classified it under 20081930 (Other nuts, otherwise prepared or preserved), as the said goods were not the nut and further there was no preparation involved for classifying it under the declared heading.

10.3 The importer has classified the impugned item under CTH-20081930 which is meant for Preparations of vegetables, fruit, nuts or other parts of plants. For ease of reference, relevant chapter headings of CTH- 20 is reproduced hereunder:

CHAPTER 20: Preparations of vegetables, fruit, nuts or

other parts of plants

2008		FRUIT, NUTS AND OTHER EDIBLE PARTS OF PLANTS, OTHERWISE PREPARED OR PRESERVED, WHETHER OR NOT CONTAINING ADDED SUGAR OR OTHER SWEETENING MATTER OR SPIRIT, NOT ELSEWHERE SPECIFIED OR INCLUDED
	-	Nuts, ground-nuts and other seeds, whether or not mixed together
2008 19	--	Other, including mixtures
2008 19 30	---	Other nuts, otherwise prepared or preserved

10.4 However, in the instant matter, it is clear that the impugned goods are 'Watermelon Kernal Seeds Prepared' which is more appropriately falling under the group of items classifiable under Chapter-12 as elaborated hereinunder:

CHAPTER 12: Oil seeds and oleaginous fruits, miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder

		1207 Other oil seed and oleaginous fruits, whether or not broken
1207 70	-	Melon seeds
1207 70 10	---	of seed quality
1207 70 90	---	other

10.5 In addition, I have also gone through the General Note of Heading 12 as detailed under according to which I am of the view that that the imported goods declared as 'Watermelon Kernal Seeds Prepared' and identified as '**Dehulled Watermelon Seed**' vide FSSAI analysis report, is more appropriately classifiable under CTH-12077090 as '**Other Melon Seeds**':

□

10.6 Further, I find that as per General Rules for the Interpretation (GRI) **the heading which provides the most specific description shall be preferred to headings providing a more general description.**

10.7 In view of above discussion, I am of the view that the importer has mis-declared the imported goods under CTH-20081930 with description as '**Other nuts, otherwise prepared or preserved**' instead of correct classification under CTH-12077090 with the description as '**Other Melon Seeds**'.

10.8 I find that Notification No.13/2023 dated 08.06.2023 issued by the DGFT, license for import of **Watermelon Seeds under ITC (HS)-12077090** is required to be obtained from DGFT. Further, Notification No.13/2015-2020 dated 21.06.2022 issued by the DGFT, the import of **Watermelon Seeds under ITC (HS)-12077090** is restricted subjected to the compliance of conditions prescribed in the import policy.

10.9 From combined reading of both the above notifications, it appears that Melon Seed and Other classifiable under CTH-12077090 is a restricted commodity and for import of the same is allowed only on the **ACTUAL USER BASIS** under license issued by the DGFT in line of Notification no. No.13/2023 dated 08.06.2023. Further, from the plain reading of the said notification, the importer intended to import Watermelon Seed was required to apply for license upto 15.06.2023. In the present matter, the consignment covered under the impugned BE was loaded from the loading port vide BL No. CSX23JEAMUN064721 dated 26.09.2023. Therefore, it appears that the impugned consignment was squarely covered under the purview of the above notification and license was required for import of the same. The importer was not having the DGFT license to import subjected items. However, it is noticed that the importer has classified the imported item under CTH-20081930 which is an attempt to dispel the policy conditions of the DGFT applicable on CTH-12077090.

10.10 I find that **Section 111(d), (m) & (o) of the Customs Act, 1962** stipulates that:

Section 111. Confiscation of improperly imported goods, etc. -

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

(a)

-

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

-

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the **condition is not observed** unless the non-observance of the condition was sanctioned by the proper officer;*

10.11 In view of above facts and discussion, I am of the view that the Watermelon Seed imported without mandatory DGFT license in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods having declared weight of 27.00 MTs and declared assessable value as **Rs.17,78,532/-** as '**restricted**' for import into India and liable for confiscation under the Section 111 (d), (m) and (o) of the Customs Act, 1962.

10.12 I find that **Section 112 of the Customs Act, 1962** stipulates that:

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:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

10.13 I find that the impugned goods imported under Bill of Entry No.20081930 dated 01.10.2023 found to be **"Melon Seeds"**, hence the importer mis-declared and mis-classified the impugned goods which is an attempt to circumvent the policy conditions of the DGFT applicable on CTH-12077090. Thus, it appears that the Watermelon Seed imported without mandatory DGFT license in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods having declared weight of 27.00 MTs and declared assessable value as **Rs.17,78,532/-** as **'restricted'** for import into India and liable for confiscation under the Section 111 (d), (m) and (o) of the Customs Act, 1962 and has thus rendered themselves liable for penal action under Section 112 (a) (i) of the Customs Act, 1962 which I hold accordingly.

10.14 I find that the importer vide letter dated 19.10.2023 has requested for provisional release of the consignment as the cargo was perishable in nature and they were incurring heavy detention/demurrage charges. The request of the importer for provisional release of the goods approved by the competent authority upon execution of Bond of full value and Bank Guarantee of Rs.2.5 lakhs. Thereafter, the goods were released provisionally on submission of the **Bond** of full value and **Bank Guarantee of Rs. 2.5 lakhs** by the importer.

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

ORDER

- i. I order to reject the declared classification ie. CTH-20081930 and description of the imported item, i.e. "Water Melon Kernel Seeds Prepared" imported under Bill of Entry No.8102754 dated 01.10.2023 and order to reclassify under CTH-12077090 as "Melon Seeds- Others" and accordingly order to re-assess the impugned Bill of Entry.
- ii. I order to confiscate the impugned goods having declared value of Rs.17,78,532/- under Section 111 (d), 111(m) & 111(o) of the Customs Act, 1962. However, as the goods has already been provisionally released on the submission of Bond of full value and Bank Guarantee, I order to impose Redemption Fine of Rs. 2,50,000/- (Rs. Two lakh Fifty thousand Only) under Section 125 of the Customs Act, 1962;
- iii. I order to impose Penalty of Rs. 1,25,000/-(Rs. One Lakh Twenty Five Thousand Only) on the M/s. Sieben Spoons Foods Private Limited, C-673, New Subzi Mandi, Azadpur, Delhi-110033 under Sections 112(a)(i) of the Customs Act, 1962.
- iv. I order to enforce upon the Bond and the Bank Guarantee of Rs.2.5 lakhs submitted by the importer.

12. 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: 13-09-2024 19:40:27

(Arun Kumar)

Additional Commissioner
Import Section, CH Mundra

F.No. CUS/APR/INV/391/2024-Gr 2

Date:13-09-2024

To,
M/s. Sieben Spoons Foods Private Limited,
C-673, New Subzi Mandi, Azadpur,
Delhi-110033

Copy to:

1. The Deputy Commissioner of Customs (RRA/TRC), Custom House, Mundra.
2. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
3. Guard File.