

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA- 370421 Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62
A. File No.	: CUS/ECFS/MISC/224/2024-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/96/2024-25 dated 19.07.2024
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 22-07-2024
E. Show Cause Notice No. & Date	: Exporter requested for Waiver of SCN & PH.
F. Noticee(s)/Party/ Exporter	: M/s Ralington Exports, Plot No. 32 & 33, Sunshine Industrial Hub-1, Navapura Railway Crossing, Changodar, Ahmedabad-382213.
G. DIN	20240771M00000666F83

1. यह अपील आदेश संबन्धित को नि शुल्क 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 हैं तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“सीमा शुल्क आयुक्त (अपील),

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

“THE COMMISSIONER OF CUSTOMS (APPEALS),

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, 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/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

- (i) उक्त अपील की एक प्रति और A copy of the appeal, and
- (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची - 1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद स.-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 जापन के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

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

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

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

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

Subject :- Mis-declaration of cargo in Shipping Bill No. 9766407 dated 10.05.2024 filed by M/s Ralington Exports -Reg.

BRIEF FACTS OF THE CASE:

M/s Ralington Exports, Plot No. 32 & 33, Sunshine Industrial Hub-1, Navapura Railway Crossing, Changodar, Ahmedabad-382213, having IEC No.BLLPB05310Q, has filed Shipping Bill No.9766407 dated 10.05.2024 through their CHA M/s United Safeway India Pvt. Ltd. for export of 11 items out of which one item mentioned at Sr. No.1 having declared FOB value of Rs.15,23,557/- (Rupees Fifteen Lakh Twenty Three Thousand Five Hundred and Fifty Seven only/-) and was declared as "Daawat Rozana Basmati Rice" under CTH-10063020.

2. The Docks Officer during the examination of the Cargo drew the

sample of above item "Daawat Rozana Basmati Rice" and sent to CRCL Kandla vide Test Memo No.208 dated 05.06.2024.

3. Test Report has been received against the Test Memo No.208 dated 05.06.2024 wherein it is mentioned that "Based on the physical appearance, forms and analytical findings, it is "Non Basmati Rice(Non Parboiled Rice) & (Broken% is 37.38%)", against the declared export cargo in the Shipping Bill as "Daawat Rozana Basmati Rice". The details of Shipping Bill and its corresponding Test Report is as under:

Sr.No	Shipping Bill No. & Date	Net Wt. of Item No.1	Test Report No. & Date	FOB Declared in SB for Item No.1 (in Rs.)	Summary of Test Result
1.	9766407 Dated 10.05.2024	15500 KGS	2353 Dated 25.06.2024	15,23,557	Non-Basmati Rice (Non Parboiled Rice) & (Broken% is 37.38%)

4. A copy of the said Test Report has been provided to the Exporter on date 05.07.2024, viz., M/s Ralington Exports for their information with a specific request to submit their submission within 10 days of the communication as to why the proceedings should not be initiated under Customs Act, 1962 as the instant case were seen fallen under the purview of Mis-declaration of the Export cargo.

5. With reference to above mentioned shipping bill, the Exporter has declared the impugned goods as "Daawat Rozana Basmati Rice" and classified the same under CTH 10063020 but pursuant to the outcome of the Test Result, the consignment of the impugned goods is found to be "Non Basmati Rice (Non Parboiled Rice) & (Broken% is 37.38%)". Therefore, the impugned goods mentioned at Sr. No.1 of the Shipping Bill No.9766407 dated 10.05.2024 attempted to export is to be considered as "Broken Rice". As per Customs Tariff, Broken Rice is classifiable under CTH 10064000 and therefore the goods attempted to export is required to be classified under CTH 10064000.

6. As per Notification No. 31/2015-2020-Customs dated 08.09.2022 issued by the Board export of Broken Rice is prohibited. The relevant extracts of the said Notification is re-produced here-in-below :

ITC HS Codes	Description	Export Policy	Revised Export Policy
10064000	Only for broken rice	Free	Prohibited

7. In view of above, it is evident that the exporter has mis-declared and mis-classified the impugned goods. Therefore, the goods entered for export are liable for confiscation under Section 113(d) & 113(i) of the

Customs Act, 1962. Furthermore, for rendering the above goods liable for confiscation, the exporter has also rendered themselves liable for penal action under Section 114(i) of the Customs Act, 1962.

8. Relevant Legal Provisions:

8.1. Section 2(19) defined the terms "Exported Goods":

"export goods means any goods which are to be taken out of India to a place outside India"

8.2. Section 50 : Entry of goods for exportation. -

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

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

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

(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:

- (a) the accuracy and completeness of the information given therein;*
- (b) the authenticity and validity of any document supporting it; and*
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.".*

8.3. 113. Confiscation of goods attempted to be improperly exported, etc.—

The following export goods shall be liable to confiscation:—

(a).....

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(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported,

contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(i) any goods entered for exportation which do not correspond in respect of value or any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.

8.4. 114. Penalty for attempt to export goods improperly, etc.—

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable,—

(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 three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

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

9. In view of above facts, it appears that:-

(i) The classification of the goods declared by the Exporter under Shipping Bill No.9766407 dated 10.05.2024 at Sr. No.1 as "Daawat Rozana Basmati Rice" classified under CTH-10063020 should not be rejected and required to be re-classified under CTH-10064000 as "Broken Rice";

(ii) the goods mentioned at Sr. No.1, covered under Shipping Bill No.9766407 dated 10.05.2024 should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962 ;

(iii) the penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter ;

SUBMISSION MADE BY THE EXPORTER:

10. The exporter vide letter dated 05.07.2024 submitted their reply as:- "They were exporting the Basmati Rice against subject Shipping Bill to African Port. They have purchased Basmati Rice from LT Foods Pvt. LTd., Delhi under their Brand "Daawat Basmati Rice" also provided the Brand NOC from the Supplier for Export from India. However at the time of LEO examination DE officer raised query that Broken Content in Basmati Rice is not as per tolerance level, which can only be determined by Lab testing and not visual examination. Still they do not want to question DE officer or Customs query and do not want any PH or SCN against the said Shipping Bill and they want their cargo back to town. It is their first time that this kind of error is happened from their supplier and they want to return the goods back to their supplier due to quality issue. They want to proceed to adjudication and ready to pay nominal fine and penalty as per test report received from lab".

RECORDS OF PERSONAL HEARING :

11. The exporter vide letter dated 05.07.2024 requested this office that they do not want any Personal Hearing and SCN and they requested for Back to Town of the Cargo. They submitted that they want to proceed for adjudication proceedings and ready to pay fine and Penalty.

DISCUSSION AND FINDINGS:

12. The exporter vide letter dated 05.07.2024 requested this office that they do not want any Personal Hearing and SCN and they requested for Back to Town of the Cargo. They submitted that they want to proceed for adjudication proceedings and ready to pay fine and Penalty. In view of above, as per principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case ex parte.

12.1 The issues to be decided by me are:

- (i) The classification of the impugned goods declared by the Exporter under Shipping Bill No.9766407 dated 10.05.2024 at Sr. No.1 as "Daawat Rozana Basmati Rice" classified under CTH-10063020 should not be rejected and required to be re-classified under CTH-10064000 as "Broken Rice";
- (ii) The impugned goods covered under Shipping Bill No.9766407 dated 10.05.2024 mentioned at Sr. No.1 should not be confiscated under Section 113 (d) & 113(i) of the Customs Act, 1962;
- (iii) The penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter;

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

12.2 I find that the exporter declared the impugned rice attempted to export under Shipping Bill No.9766407 dated 10.05.2024 as "Daawat Rozana Basmati Rice" and classified the same under CTH-10063020 but pursuant to the outcome of the Test Result, the consignment of the impugned goods attempted to export is found to be "Broken Rice (Broken 37.38%)". As per Customs Tariff, Broken Rice is classifiable under CTH-10064000 and therefore the same is required to be classifiable under CTH-10064000.

12.3 I find that with effect from 09.09.2022, as per Notification No.31/2015-2020-Customs dated 08.09.2022 issued by Directorate General of Foreign Trade (DGFT), the export of "Broken Rice" classifiable under CTH-10064000 is prohibited. I find that as per Trade Notice No.18/2022-23 dated 04.10.2022, the broken percentage of rice is above the permissible limit. Therefore, I find that the impugned goods are in violation of DGFT Notification No.31/2015-2020-Customs dated 08.09.2022 read with Trade Notice No.18/2022-23 Dated 04.10.2022.

12.4 In view of above facts and discussion, I am of the view that the exporter has mis-declared and mis-classified the impugned goods as "Daawat Rozana Basmati Rice" under CTH-10063020 which is actually classifiable under CTH-10064000 as "Broken Rice" which is prohibited to export as discussed *supra*. Therefore, I find that the impugned goods mentioned at Sr. No.1 under Shipping Bill No.9766407 dated 10.05.2024 attempted to be export by the exporter are liable for confiscation under Section 113(d) and 113(i) of Customs Act, 1962.

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

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ¹[²not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

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

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount

of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

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

12.6 I find that the impugned goods attempted to export under Shipping Bill No.9766407 dated 10.05.2024 found to be "Broken Rice" which are prohibited to export, therefore, in view of the above provisions of Section 114 of Customs Act, 1962, the penalty in this case is imposable under Section 114(i) of the Customs Act, 1962 upon the exporter for making the impugned goods liable for confiscation.

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

ORDER

(i) I order to reject the classification of the impugned goods mentioned in Shipping Bill No. 9766407 dated 10.05.2024 at Sr. No.1 declared as "Daawat Rozana Basmati Rice" attempted to export under Shipping Bill No.9766407 dated 10.05.2024 under CTH-10063020 by the exporter and ordered to re-classify the same under CTH-10064000 as "Broken Rice";

(ii) I order to confiscate the impugned goods mentioned at Sr. No.1 having FOB value of Rs.15,23,557/- (Rupees Fifteen Lakh Twenty Three Thousand Five Hundred and Fifty Seven only/-) covered under Shipping Bill No.9766407 dated 10.05.2024 under Section 113 (d) and 113(i) of the Customs Act, 1962. However, the exporter requested for back to town of the cargo, so I give the option to the exporter for Back to town of the cargo after paying the Redemption Fine of Rs. 1,60,000/- (Rupees One Lakh Sixty Thousand only);

(iii) I order to impose and recover Penalty of Rs. 80,000/- (Rupees Eighty Thousand only) on impugned goods covered under Shipping Bill No.9766407 dated 10.05.2024 at Sr. No. 1 under Section 114 (i) of the Customs Act, 1962.

14. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
Mukesh Kumari
(Mukesh Kumari)
Additional Commissioner (Exper.)
Date: 22-07-2024 12:23:52
Customs House, Mundra

F.No. CUS/ECFS/MISC/224/2024

Dated:- 22-07-2024

BY SPEED POST

To,
M/s Ralington Exports, Plot No. 32 & 33,
Sunshine Industrial Hub-1, Navapura Railway Crossing,
Changodar, Ahmedabad-382213.

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

