

 <p align="center">OFFICE OF THE COMMISSIONER OF CUSTOMS MUNDRA COMMISSIONERATE Custom House, MP&SEZ, Mundra (Kachchh)- 370421 Phone No:02838-271463; Fax-02838- 271169/271475</p>	
F. No. CUS/ASS/MISC/1032/2024-EA-O/o Pr Commr-Cus-Mundra	
Name of Exporter	: M/s Dhanraj Sugars Private Limited
Address of Exporter	: Branch 38, Mega Mall, Surendranagar, Gujarat
IEC No.	: 2416916548
Name of CB	: M/s. Stead Fast Impex
Shipping Bill No. & Date	: 8194805 Dated 09.03.2024
Description of Goods	: PHARMACEUTICAL RAW MATERIALS:SUCROSE BP (CTH-17029090)
CFS Name	: M/s. All Cargo CFS, Mundra
DIN No.	: 20240971MO0000888CCB

Show Cause Notice

(Under Section 124 of the Customs Act,1962)

M/s. Dhanraj Sugars Private Limited (IEC- 2416916548), Branch 38, Mega Mall, Surendranagar, Gujarat had filed following Shipping Bill for export of "PHARMACEUTICAL RAW MATERIALS:SUCROSE BP (CTH-17029090)" through their CHA- M/s. Stead Fast Impex; for declaring the goods under Chapter 17029090. The Country of destination is declared as Dhaka, Bangladesh and the port of discharge is Chittagong in Bangladesh. The details of the Shipping Bill (**RUD-1**) are as under:-

Shipping Bill No(s). & Date	Description of Goods	Qty. Kgs	Declared FOB Value (in Rs.)	IGST Amount @18% (in Rs.)	Drawback Amount (in Rs.)	ROS amt Rs
8194805 dated 09.03.2024	Pharmaceutical Raw Materials:Sucrose Bp	25000	15,33,400/-	0	2,300/-	0

2. Issue in Brief:

Whereas, M/s Dhanraj Sugars Pvt. Ltd. has filed a Shipping Bill No. 8194805 dated 09.03.2024 through CHA-M/s Steadfast Impex for export of "PHARMACEUTICAL RAW MATERIALS:SUCROSE BP" under CTH-17029090 and the same came for assessment. It was noticed during

assessment that M/s Dhanraj Sugars Pvt. Ltd. has mis-declared and mis-classified their goods to be exported as "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" under CTH-17029090 which appears to be classifiable under CTH-17019990.

3. Investigation:

3.1. The samples were drawn by the export assessment section in respect of goods exported as "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" under Shipping Bill No. 8194805 dated 09.03.2024 and sent to CRCL lab vide Test Memo no. 382 Dated 25.04.2024.

3.2 Further, CRCL Kandla vides Test report no. 756-EXPO/26.04.2024 dated 30.05.2024 (**RUD-2**) submitted the lab report in respect of Test Memo no. 382 Dated 25.04.2024. The laboratory test report for the said consignment reproduced hereunder:-

Test report No. 756-EXPO/26.04.2024 dated 30.05.2024 for "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP"

Nature:	The Sample as received is in the form of white crystalline coarse powder.
Composition	It is composed of sucrose and has the following constants: 1. Moisture Content (% by mass)= 0.02 2. Ash Content (% by mass)= 0.01 3. Colour (ICUMSA-IU Units) = 41 4. Sucrose Content (based on polarisation value, Deg.Z)= 99.69
Note/comments:	
	Sealed remnant sample returned herewith.

From the above test report, it is noticed that the sample has 99.69% Sucrose Content that signifies it is classifiable under **CTH-17019990** which is restricted for export from date 01.06.2022 as per Notification No. 10/2015-20 dated 24.05.2022 (**RUD-3**). The restriction on export of sugar (Raw Sugar, Refined Sugar and White Sugar) is extended till 31.10.2023 or until further orders vide Notification No. 40/2015-20 dated 28.10.2022 (**RUD-4**). Further, this restriction is extended beyond 31.10.2023 till further orders vide Notification no. 36/2023 dated 18.10.2023 (**RUD-5**).

3.3 The DGFT has issued Notification No.60/2023 dated 13.02.2024 regarding Chapter-1 to 39 of Schedule-2 (Export Policy) of ITC (HS), 2023. The Sr. No. 1 of Main Note of Chapter 17 (Sugars and Sugar Confectionery) is reproduced hereunder:

--	--

Sl. No.	Notes
1	Pharmaceutical Grade Sugar will include; (i) Sucrose IP/BP/EP/USP/JP and (ii) Sucrose AR & LR] and Specialty Sugar [(i) Sugar cubes (ii) Sugar sachets (white & brown) (iii) Castor sugar (iv) Demerara sugar (v) Light brown sugar (vi) Icing sugar (vii) Fondant icing sugar (viii) Kathali sugar (ix) Candy sugar (x) Rainbow sugar (xi) Pearl sugar and (xii) Trimoline (invert sugar) [Notification No. 29(RE-2012)/2009-2014 dated 11.01.2013]

Further, in the Policy condition, the reference has been made to Notification No. 20/2015-20 dated 07.09.2015, Notification No. 10/2015-20 dated 24.05.2022 and Notification No. 36/2023 dated 18.10.2023 against HSN-17011490 and 17019990.

3.4 The Notification No. 20/2015-20 dated 07.09.2015 has amended the Export Policy for Sugar as "Free" with Nature of Restriction. The same is reproduced hereunder:

S. No.	Tariff Item HS Code	Unit	Item Description	Export Policy	Nature of Restriction
93	17010000	Kg	(a) Sugar	Free	
		Kg	(b) Sugar to EU under CXL Quota	Free	The Certificate of Origin shall be issued by Additional DGFT, Mumbai. The exporters shall be required to furnish the details of actual exports (viz. quantity, value, destination, name & address of foreign buyer etc) to the Additional DGFT, Mumbai as well as to APEDA, New Delhi. This will be subject to quantitative ceiling notified by DGFT from time to time.
		Kg	(c) Sugar to USA under TRQ	Free	The quota will be operated by APEDA, New Delhi as per the modalities and operational guidelines to be notified by APEDA. The exporters shall be required to furnish the details of actual exports (viz. quantity, value, destination, name & address of foreign buyer etc) to APEDA, New Delhi. Certificate of Origin, if

				required, shall be issued by Additional DGFT, Mumbai. This will be subject to quantitative ceiling notified by DGFT from time to time.
--	--	--	--	---

3.5 The export policy of sugar has been amended from free to restricted vide Notification No. 10/2015-20 dated 24.05.2022. The relevant part of the notification no. 10/2015-20 dated 24.05.2022 has been reproduced hereunder:

S. No.	ITC(HS Code)	Description	Export Policy	Revised Policy	Policy condition
93	17011490 17019990	Sugar (Raw Sugar, Refined Sugar and White Sugar)	Free	Restricted	i. with effect from 1 st June 2022 upto 31 st October 2022 or until further orders, whichever is earlier, export of sugar is allowed only with specific permission from Directorate of Sugar, Department of Food and Public Distribution (DFPD), Ministry of Consumer Affairs, Food and Public Distribution ii. Detailed procedure for issue of necessary permissions for export of sugar will be notified separately by Department of Food and Public Distribution (DFPD)

Further, the restriction on export of Sugar (Raw Sugar, Refined Sugar and White Sugar) has been extended beyond 31.10.2023 till further vide Notification No. 36/2023 dated 18.10.2023.

3.6 An Email dated 13.03.2024 had been sent to DGFT (**RUD-6**) to clarify whether "Pharmaceutical Grade Sugar" falls within the purview of Restricted category or not. In reply to this, the DGFT vide email dated 03.04.2024 (**RUD-7**) has informed that "*distinguishing Pharmaceutical Grade sugar from refined sugar is technically not feasible. Further, there is no separate HSN Code for Pharmaceutical Grade sugar. Hence, under extant export policy for sugar, export of Pharmaceutical Grade sugar is Restricted.*"

In view of the foregoing paras, it appears that the goods declared

by the exporter under Shipping Bill No. 8194805 dated 09.03.2024 as "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" is restricted in export policy of sugar in terms of Notification No. 10/2015-20 dated 24.05.2022 read with Notification No. 36/2023 dated 18.10.2023.

3.7 During the course of investigation, Summon dated 12.07.2024 was issued to the Exporter i.e, M/s. Dhanraj Sugars Private Limited to produce the documents pertaining to the shipping bill no. 8194805 dated 09.03.2024 and to tender statement. In reply to this, the exporter vide email dated 16.07.2024 had requested to provide any date during the first week of August for personal hearing citing reason that he was traveling out of country (China) and would be back to office after 30th July only.

Thereafter, another Summons dated 25.07.2024 and 04.09.2024 were issued to the Exporter to produce the documents pertaining to the shipping bill no. 8194805 dated 09.03.2024 and to tender statement. In response, Statement of Shri Naresh Kella, director of M/s Dhanraj Sugars Pvt. Ltd., has been recorded on 06.09.2024 (**RUD-8**), wherein, he, inter-alia stated that

(i) *Shri Naresh Kella is the Director of M/s Dhanraj Sugars Pvt. Ltd and look after all the day to, day work of the company and responsible for all the matters related to their company including export, operations, Finance and accounting.*

(ii) *They are engaged in manufacturing of pharmaceutical grade sugar and specialty sugars. There are 3 Directors in the company 1) Shri Dhanraj Kella 2) Shri Lalit Kella and 3) Naresh Kella himself. Their company was incorporated in 2011 and commercial production started in 2015. They also deal in bulk supply/Trading of normal white sugar.*

(iii) *On being asked the reason for choosing CTH 1702 in place of CTH 1701 for the product to be exported under Shipping bill no.8194805 dated 09.03.2024, He stated that "since the Sucrose BP has no specific HSN mentioned in the Chapter Headings, they have chosen the CTH 1702 under other sugars category."*

(iv) *He described the process of manufacturing pharmaceutical grade sugar and specialty sugars. He stated that White sugar below 150 icumsa is used as raw material which is further melted and boiled under vacuum pan process then transferred to pugmil and centrifugation process to receive the final product which is compliant as per USP/ BP parameters. He also submitted the flow chart processes.*

(v) *He stated that the Normal Sugar contains different types of impurities visible and invisible, to make it unfit for using the manufacturing of pharmaceutical formulation or*

medicines. Pharmaceutical grade sugar is subject to stringent manufacturing process and test parameters set by the FDAs globally and it should strictly pass through all the specified test parameters as prescribed by different pharmacopeia. Therefore, this shipment of sucrose BP is tested and approved by their customer which is also a pharmaceutical company located in Bangladesh where the subject shipment was to be shipped.

(vi) He perused the test report of sample taken from their export consignment of shipping bill 8194805 dated 09.03.2024 and offered no comment. He submitted the in-house test report for the subject shipment. He also submitted the copy of FDCA license copy and product permission copies for sucrose BP for your kind perusal.

(vii) He stated that they have not applied for any export release order from Government of India and no such export release order has been received.

3.8 From the forgoing paras, it appears that exporter under the guise of naming the commodity as "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" has deliberately tried to escape the restriction imposed on the export of sugar. The same can be substantiated vide the above discussed DGFT reply vide email dated 03.04.2024 whereby it is informed that "*distinguishing Pharmaceutical Grade sugar from refined sugar is technically not feasible. Further, there is no separate HSN Code for Pharmaceutical Grade sugar. Hence, under extant export policy for sugar, export of Pharmaceutical Grade sugar is Restricted.*"

3.9 Further subsequent to DGFT Notification No. 10/2015-20 dated 24.05.2022 vide which the restriction has been imposed on export of sugar, Some exporters, who had already contracted for export of pharma sugar, were unable to export due to restrictions. Therefore to address the problem raised by such exporters, specific export release orders were granted to few exporters by Directorate of Sugar & Vegetable Oils, Department of Food & Public Distribution for the specified quantities of the contract. However, in the instant case, the exporter has not submitted any such permission/ export release order for export of their present goods declared in Shipping Bill No. 8194805 dated 09.03.2024. The exporter has also stated in his statement recorded on 06.09.2024 that they have not applied for any export release order from Government of India and no such export release order has been received.

4. Classification of the goods to be exported:

The exporter has classified the goods as "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" under Shipping Bill No. 8194805 dated 09.03.2024 in CTH 17029090. The export policy is free for the export of goods falling under CTH 17029090. The description of CTH 17029090 is

as under:

Chapter Number	ITC-HS Codes	Description
17	1702	Other sugars, including chemically pure lactose, maltose, glucose and fructose, in solid form; sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel.
17	170290	Other, including invert sugar and other sugar and sugar syrup blends containing in the dry state 50 percent by weight of fructose
17	17029990	Other

However, as per the CRCL Kandla lab report vide test report no. 756-EXPO/26.04.2024 dated 30.05.2024 in respect of sample of goods to be exported under Shipping Bill No. 8194805 dated 09.03.2024, the goods are having 99.69% Sucrose Content. Therefore, it is classifiable under CTH-17019990. The description of CTH 17019990 is as under:

Chapter Number	ITC-HS Codes	Description
17	1701	Cane or beet sugar and chemically pure sucrose, in solid form.
17	170199	Other : -- Other
17	17019990	Other

As per World Customs Organization's (WCO) Explanatory Notes to the Harmonized Commodity Description and coding System (Harmonized System) for Heading 17.01:-

"The heading also includes chemically pure sucrose in solid form, whatever its origin."

The policy of export is restricted for goods classifiable under CTH 17019990. In view of the above, it appears that the exporter has misclassified the goods as "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" in CTH 17029090 only to avoid the restriction on export of sugar (Raw Sugar, Refined Sugar and White Sugar) imposed vide Notification No. 10/2015-20 dated 24.05.2022 read with Notification No. 40/2015-20 dated 28.10.2022 read with Notification no. 36/2023 dated 18.10.2023. The correct classification of goods needs to be CTH 17019990. The DGFT vide email dated 13.03.2024 has also clarified that the export of Pharmaceutical Grade sugar is Restricted under extant export policy for sugar.

The Section 2(33) of Customs Act, 1962 provides the definition of Prohibited goods. The same is reproduced hereunder:

"(33) "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;"

In view of the above, it appeared that the goods "PHARMACEUTICAL RAW MATERIALS: SUCROSE BP" are found to be non-compliant with the export policy conditions mentioned in Notification No. 10/2015-20 dated 24.05.2022 read with Notification No. 40/2015-20 dated 28.10.2022 read with Notification no. 36/2023 dated 18.10.2023 and hence in violation and contrary to the provisions of Foreign Trade Policy of Government of India which makes the goods prohibited for export.

5. RELEVANT LEGAL PROVISIONS:

CUSTOMS ACT, 1962:

5.1. Section 2(19) of Customs act, 1962 defined the terms "Exported Goods":

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

5.2. 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:

(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."

5.3. Section 113: Confiscation of goods attempted to be improperly exported,etc.-

The following export goods shall be liable to confiscation:-

(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 in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.

5.4. Section 114 of Customs act, 1962: 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;

5.5. Section 117 of Customs act, 1962. Penalties for contravention, etc., not expressly mentioned

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding ten thousand rupees.

6. SUMMARY OF INVESTIGATION:

6.1 In view of the foregoing paras, it appears that the Exporter has misclassified the goods to be exported with intent to avoid the restriction on export of sugar (Raw Sugar, Refined Sugar and White Sugar) imposed vide Notification No. 10/2015-20 dated 24.05.2022 read with Notification No. 40/2015-20 dated 28.10.2022 read with Notification no. 36/2023 dated 18.10.2023. The exporter has classified the goods under CTH 17029090 whereas during test report, the correct classification appears to be CTH-17019990. Therefore, there is no option other than to complete confiscation of the goods brought for exportation under the provisions of Customs

Act, 1962.

6.2 From the foregoing enquiry, it appears that:

- (i) The classification declared by the Exporter was not the proper and liable to be rejected.
- (ii) The Exporter has misclassified the goods intentionally to avoid the restriction on export of sugar (Raw Sugar, Refined Sugar and White Sugar). The export policy is free for the export of goods falling under CTH 17029090 whereas it is restricted for goods classifiable under CTH 17019990.

7. In view of the above, it appears that the exporter has attempted to misclassify the impugned goods to avoid the policy restriction on export of sugar (Raw Sugar, Refined Sugar and White Sugar). Therefore, the goods covered under impugned Shipping Bill are liable for confiscation under Section 113(d) and 113(i) of the Customs Act, 1962. The exporter for their acts of omission and commission made himself liable for penalty under Section 114(i) and Section 117 of the Customs Act, 1962.

8. Now, therefore, M/s. Dhanraj Sugars Private Limited (IEC-2416916548), Branch 38, Mega Mall, Surendranagar, Gujarat (the exporter) are called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at 5B, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why:

- (i) The classification of the goods in CTH 17029090 covered under impugned Shipping Bill bearing no. 8194805 dated 09.03.2024 should not be rejected and re-classified in CTH 17019990.
- (ii) The mis-declared goods covered under impugned Shipping Bill attempted to be exported as mentioned at (i) above, should not be confiscated under Section 113(d) and 113(i) of the Customs Act, 1962.
- (iii) Penalty should not be imposed upon the exporter under the provisions of Sections 114(i) of the Customs Act, 1962.
- (iv) Penalty should not be imposed upon the exporter under the provisions of Sections 117 of the Customs Act, 1962.

9. The above Noticee are further required to state specifically in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no specific mention is made about this in their written submissions, it shall be presumed that they do not wish to be heard in person. They should produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defense.

10. They are further required to note that their reply should reach within 30 (thirty) days or within such extended period as may be allowed

by the adjudicating authority. If no cause is shown against the action proposed above within 30 days from the receipt of this Show Cause Notice or if they do not appear before the adjudicating authority as and when the case is posted for hearing, the case is liable to be decided ex-parte on the basis of facts and evidences available on record.

11. This Show Cause Notice is issued without prejudice to any other action that may be taken against them, under this Act or any other law for the time being in force, or against any other Company, person(s), goods and conveyances whether named in this Notice or not.

12. The documents relied upon for the purpose of this Notice are attached to this Notice as Annexure-A and the copies thereof wherever not earlier supplied are enclosed herewith or would be made available for inspection on demand being made in writing within 30 days from the date of the receipt of this Notice

13. The Department reserves its right to amend, modify or supplement the Notice at any time on the basis of evidences available/evidences gathered later on, prior to the adjudication of the case.

14. This Show Cause Notice has been issued for the present cargo declared in Shipping Bill No. 8194805 dated 09.03.2024 and further, investigation in respect of past consignments will be completed in due course.

Signed by
Mukesh Kumari
Additional Commissioner,
Date: 09-09-2024 17:14:34
Custom House, Mundra

F. No. CUS/ASS/MISC/1032/2024-EA-
Dated:09.09.2024

To,

M/s. Dhanraj Sugars Private Limited (IEC- 2416916548),
Branch 38, Mega Mall,
Surendranagar, Gujarat

Copy to:

1. The Assistant Commissioner (TRC/RRA/EDI Section), Custom House Mundra
2. Guard File



