



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

A	File No.:	CUS/APR/BE/MISC/874/2023-Gr 1
B	Order-in-Original No.:	MCH/ADC/MK/132/2023-24
C	Passed by:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	02.08.2023
E	Date of issue:	02.08.2023
F	Importer:	M/s Laxmichand Dayabhai Export CO (IEC No. 0388038136), 512/516, 5 th Floor, Rewa Chambers, Sir V Thakersey Marg, New Marine Lines, Mumbai, Maharashtra- 400020
G	SCN No. & Date	Importer waived SCN vide letter dated 24.07.2023
H	DIN	20230871MO000061136A

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

Sub.: Re-import of "Indian Cumin Seeds Purity 99.5%" by M/s Laxmichand Dayabhai Export CO (IEC No. 0388038136)- m/reg.

BRIEF FACTS OF THE CASE

M/s Laxmichand Dayabhai Export CO (IEC No. 0388038136) having their address at 512/516, 5th Floor, Rewa Chambers, Sir V Thakersey Marg, New Marine Lines, Mumbai, Maharashtra- 400020 [*hereinafter referred to as the importer for the sake of brevity*] filed Bill of Entry No. 4396172 dated 28.01.2023 through their Custom Broker M/s Right Ship Agency (ADKPG6839NCH003) for clearance of "Re-import of Indian Cumin Seeds Purity 99.5%" valued at Rs. **74,90,329/-** imported vide BL No.- PGSM20309156501 dated 30.12.2022. Re-Imported goods are covered under Commercial Invoice No. 7047 dated 07.09.2022 issued by M/s Elite Spice INC, 7151, Montevideo Road, Jessup, MD 20794, USA. The said re-imported goods were earlier exported to their consignee M/s Elite Spice INC, USA vide Shipping Bill No. 4025692 dated 07.09.2022. The details of Re-imported goods are as under: -

Table A

Sr No. as per Bill of Entry	Description as per Bill of Entry & Commercial Invoice	Declared CTH	Net Weight (In MTS)
01	Indian Cumin Seeds Purity 99.5% (Re-import vide Shipping Bill No. 4025692 dated 07.09.2022)	09093129	25

1.1 The Importer has mentioned in their letter-dated 24.07.2023 that said cargo was rejected by their overseas buyer. Further, they filed for FSSAI NOC for the same, but the same has been rejected by FSSAI Office, Mundra. Hence, they wish to re-export of the same cargo to their new buyer M/s Dipak Trading Co PTE Ltd., Singapore.

1.2 On re-import of the said cargo, the samples were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra vide sample ID No. 537022023V3NUCCYE and forwarded the Rejection Report vide NCC No. RNCC202300010961 dated 10.02.2023.

1.3 The FSSAI Officer, Mundra vide their aforesaid Rejection Report in respect of the representative sample stated that their office is not in a position to issue NOC of the products mentioned above as the results of the inspection/analysis shows that the samples do not confirm to the specifications under the FSS Act, 2006, and rules and regulations made

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thereunder.

1.4 Further, a letter bearing Ref. No. FSSAI/Mundra/Custom.Corr.2023/078 dated 22.06.2023 addressed to Deputy Commissioner of Customs, Customs House, Mundra was received from the authorized officer, FSSAI, Mundra Port, Mundra vide which they informed that the sample of "Indian Cumin Seeds 99.5% Purity" against Bill of Entry No. 4396172 dated 28.01.2023 imported by M/s. Laxmichand Dayabhai Export Company (IE Code- 0388038136 & FSSAI License Number 10017022006322) is found non-conforming at both Primary lab testing at FSSAI accredited laboratory and retest at Referral laboratory. Further, they stated that their office is of the opinion that the consignment imported shall not to be released or cleared from this port for domestic consumption for the reasons mentioned above. As per the second review appeal order received from FSSAI HQ, New Delhi to this office in mail dated 19.06.2023: "allow the said product to be re-exported directly from custom bonded warehouse after the mandatory procedure of Spice Board inspection and testing for Export. They have no Objection to move the cargo from CFS Mundra to Custom Bonded Warehouse.

1.5 Further, the importer has submitted a Contract having No. X6695/A dated 24.07.2023 executed between their new buyer M/s Dipak Trading Co PTE Ltd., Singapore and them. The said contract is for re-export of the above-stated entire consignment covered under Bill of Entry No. 4396172 dated 28.01.2023.

1.6 From the above, it appears that the importer does not comply with FSS Act, 2006 and Rules made thereunder. Further, the imported goods are prohibited as per Section 2(33) of the Customs Act, 1962 & liable for confiscation as per Section 111(d) of the Customs Act, 1962 and allowed for re-export or destruction. For this action, the importer is liable for penal action as per Section 112 of the Customs Act, 1962.

2. LEGAL PROVISIONS APPLICABLE IN THE CASE:

Following provisions of law are applicable in the present case:

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

111. Confiscation of improperly imported goods etc.

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

(d) any goods which are imported or attempted to be imported or are

brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.

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

112. Penalty for improper importation of goods, etc.

Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, shall be liable,—

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

SHOW CAUSE NOTICE & PERSONAL HEARING

3. The importer vide letter dated 24.07.2023 have requested to re-export the goods covered under Bill of Entry No. 4396172 dated 28.01.2023 to their new buyer. They also submitted that they don't require Show Cause Notice and personal hearing in the matter.

DISCUSSION AND FINDINGS

4 . I have carefully gone through the case records. The importer vide letter dated 24.07.2023 have requested for waiver of the show cause notice and personal hearing in the matter. Thus, I find that 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 on the basis of the documentary evidence available on records. The points to be decided in the instant case are:-

- I. Whether the imported goods (details mentioned in Table A Above) weighing 25 MTS and valued at Rs. 74,90,329/- are liable for confiscation under Section 111(d) of the Customs Act, 1962.
- II. Whether the importer is liable for penal action under 112(a) of Customs Act, 1962.

4.1 I find that the samples were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra vide sample ID No. 537022023V3NUCCYE and forwarded the Rejection Report vide NCC No. RNCC202300010961 dated 10.02.2023 with remarks that the samples do

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not confirm to the specifications under the FSS Act, 2006, and rules and regulations made thereunder.

4.2 I further find that FSSAI vide letter dated 22.06.2023 has informed the sample of "Indian Cumin Seeds 99.5% Purity" against Bill of Entry No. 4396172 dated 28.01.2023 imported by M/s. Laxmichand Dayabhai Export Company (IE Code- 0388038136 & FSSAI License Number 10017022006322) is found non-conforming at both Primary lab testing at FSSAI accredited laboratory and retest at Referral laboratory. Further, they stated that their office is of the opinion that the consignment imported shall not to be released or cleared from this port for domestic consumption for the reasons mentioned above. Further, they have given NOC for re-export of the subject goods stating that "allow the said product to be re-exported directly from custom bonded warehouse after the mandatory procedure of Spice Board inspection and testing for Export. They have no Objection to move the cargo from CFS Mundra to Custom Bonded Warehouse.

4.3 I find that the importer vide letter dated 24.07.2023 have requested to re-export the goods covered under Bill of Entry No. 4396172 dated 28.01.2023. Further, the importer has submitted a contract having No. X6695/A dated 24.07.2023 executed between their new buyer M/s Dipak Trading Co PTE Ltd., Singapore and them for re-export of the subject goods.

4.4 From the above, I find that the FSSAI did not find the goods fit for home consumption. Prima face, it is seen that said cargo is mainly for the human consumption and such conditions is not fulfilled during FSSAI test, hence, the imported goods may not be cleared from Mundra Port and same is required to be re-exported. The failure of sample resulted into non-compliance of the provisions of Food Safety & Standards Act, 2006 as discussed in the foregoing paras. Therefore, such goods would be treated as prohibited for import and action on such goods and persons involved is to be taken under the Customs Act, 1962.

In view of the above, I find that the importer has violated provisions of FSS Act, 2006 and Rules made thereunder, thus the imported goods are prohibited as per Section 2(33) of the Customs Act, 1962 & liable for confiscation under Section 111(d) of the Customs Act, 1962. For this action, importer rendered themselves liable for the penal action under the

provisions of Section 112(a)(i) of the Customs Act, 1962.

4.5 I find that the importer has requested to re-export of the goods. CBIC Circular No. 58/2001-Cus. dated 25.10.2001 prescribes that the goods which are not found fit for human consumption can be either destroyed or to be re-exported after necessary adjudication proceedings. The provision of food safety and standard act 2006 are not specifically restricting the re-export of such failed consignment. Therefore, the option of re-export can be availed by the Importer after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962.

Section 125(1) of the Customs Act, 1962 provides that

"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit"

I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject imported goods.

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

ORDER

5.1 I order for confiscation of imported goods weighing 25 MTS and valued at Rs. 74,90,329/- covered under Bill of Entry No. 4396172 dated 28.01.2023 under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 5,00,000/-** (Rupees Five Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

5.2 I impose a penalty of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) on M/s Laxmichand Dayabhai Export CO (IEC No. 0388038136) under Section 112 (a)(i) of the Custom Act, 1962.

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6. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Signed by

Mukesh Kumari

Date: 02-08-2023 13:56:45

Import Section, CH Mundra

F.No. CUS/APR/BE/MISC/874/2023-Gr 1 Date: 02-08-2023

To,

M/s Laxmichand Dayabhai Export CO

(IEC No. 0388038136)

512/516, 5th Floor, Rewa Chambers,

Sir V Thakersey Marg, New Marine Lines,

Mumbai, Maharashtra- 400020

Copy to:

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