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	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/DOCK/BTT/107/2024-Docks Examn-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/146/2024-25 dated 01.10.2024
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 01.10.2024, 01-10-2024
E. Show Cause Notice No. & Date	: SCN and PH Waiver
F. Noticee(s)/Party/ Exporter	: M/s Al Rumana Agro Commodities, Shop A 1/221 Gali 9 KH NO 270/228/1 Afghani Chowk, Wazirabad, Delhi - 110084
G. DIN	: 20241071M00000217779

1. यह अपील आदेश संबन्धित 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),
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 be 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 सं०-6 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/ 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 अन्य के, अधिनियम शुल्क सीमा और 1982, अपील) नियम) । चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी

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 माग 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.

BRIEF FACTS OF THE CASE:

M/s Al Rumana Agro Commodities, Shop A 1/221 Gali 9 KH NO 270/228/1 Afghani Chowk, Wazirabad, Delhi -110084 having IEC No. 0515029459, have filed Shipping Bill No. 9987812 dated 18.05.2024 through their CHA-M/s Shakti Clearing Agency for export of goods declared as "**Rozana Basmati Rice**" under CTH-10063020.

2. The Docks Officer after examination submitted that on physical appearance, the broken rice percentage is appeared high as comparison to the percentage mentioned for Basmati Rice. As per instruction received from DC/Export, RSS were drawn vide Test Memo No. 009 dated 04.06.2024 and forwarded the same to CRCL, Kandla for testing. CRCL, Kandla vide their Report No. 2363 dated 21.06.2024 concluded that "*based on the physical appearance, forms and analytical finding, it may be considered as Basmati Rice. However, % of broken grains exceeds the limit as per the specification issued vide The Gazette of India FSSAI notification dated 11.01.2023 (F. No. Std/Notifications/35.1/2021)*". The details of Shipping Bill and corresponding Test Report are as under:

Sr. No.	Shipping Bill No. & Date	Net Wt.	Test Report No. & Date	FOB Declared in SB (in Rs.)	Summary of Test Result
1.	9987812 dated 18.05.2024	23.74 MTs	2363 dated 21.06.2024	20,40,595/-	Basmati Rice with Broken Rice 19.84%
TOTAL				20,40,595/-	

As per Gazette Notification CG-DL-E-12012023-241910 dated 11.01.2023 the tolerance limit of Broken Percentage in all type of Basmati Rice is fixed not more than by 5%.

3. A copy of the said Test Report has been provided to the authorized CB of Exporter vide acknowledgement dated 01.08.2024 for their information as to why the proceedings should not be initiated under the Customs Act, 1962 as the instant case were seen fallen under the purview of Mis-declaration of the Export cargo.

4. The exporter vide letter dated 24.09.2024 accepted the test reports and requested for Back to Town of the cargo and he is ready to pay fine and penalty as per the Customs Act, 1962.

5. The goods declared as “**Rozana Basmati Rice**” were found mis-declared in terms of description as per test report dated 21.06.2024. Further, as per Notification No.31/2015-2020-Customs dated 08.09.2022 issued by DGFT; the export of “Broken Rice” under CTH-10064000 is prohibited w.e.f. 09.09.2022. The relevant portion of above notification is reproduced as under:-

The Central Government, in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby amends the Export Policy of broken rice against ITC (HS) code 1006 40 00 of Chapter 10 of Schedule 2 of the ITC (HS) Export Policy, as under:-

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

6. The exporter has declared the goods to be exported vide the said SB as “Basmati Rice” and classified the same under CTH-10063020. However, as per Test Report, it is found and accepted by the exporter as well that the impugned goods are actually “Broken Rice” and not the one declared by the exporter. Also, as the goods were mis-declared, therefore, proper classification is required to be decided in this case.

7. Further, Section 50 of the Customs Act, 1962, which places onus upon the exporter, reads as follows:

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 may be prescribed: Provided that*

(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. Whereas, it appears that, the exporter by resorting to mis-declaration of the description/CTH of the impugned goods has failed to comply with the provisions of the Section 50 of the Customs Act, 1962. Further, the exporter has also accepted that the impugned goods to be exported vide the said SB has been mis-declared as 'Basmati Rice' (CTH-10063020) while the impugned goods are in fact "Broken Rice" (CTH 10064000) as confirmed from the test report.

9. Whereas, from the above, it is evident that the export of Broken Rice (CTH 10064000) is prohibited w.e.f. 09.09.2022, As per Notification No.31/2015-2020-Customs dated 08.09.2022 issued by DGFT. Accordingly, it appears that, the exporter by resorting to mis-declaration and mis-classification has rendered the impugned goods liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962. Furthermore, for rendering the goods liable for confiscation, the exporter has also rendered themselves liable for penal action under Section 114(i) of the Customs Act, 1962.

10. The relevant portion of the Section 113(d), 113(i) and 114(i) of the Customs Act, 1962 are as follows:

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. –

The following export goods shall be liable to confiscation as per:

 (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.

Section 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.*

11. In view of the above, it appears that:

- (i) The description as well as classification of the impugned goods, attempted to be exported mentioned under Shipping Bill No. 9987812 dated 18.05.2024 as "Basmati Rice" (CTH-10063020) are liable to be rejected and required to be re-classified as "Broken Rice" under CTH 10064000;
- (ii) Impugned goods covered under Shipping Bill No. 9987812 dated 18.05.2024 having FOB Value Rs. 20,40,595/- are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962;
- (iii) The exporter, M/s Al Rumana Agro Commodities, having IEC No. 0515029459 for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING:

12. The Exporter has requested for waiver of Show Cause Notice and Personal Hearing by the adjudicating authority vide letter dated 24.09.2024. The Exporter also requested for Back to Town of the goods.

DISCUSSION AND FINDINGS:

13. I have carefully gone through the records of the case. The exporter requested for waiver of Show Cause Notice and personal hearing and requested to decide the matter on merit. Thus, I find that the 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.

13.1. The issues to be decided by me are:

- (i) The description as well as classification of the impugned goods attempted to be exported mentioned under Shipping Bill No. 9987812 dated 18.05.2024 as "Basmati Rice" (CTH-10063020) are liable to be rejected and required to be re-

classified as "Broken Rice" under CTH 10064000;

- (ii) Impugned goods covered under Shipping Bill No. 9987812 dated 18.05.2024 having FOB Value Rs. 20,40,595/- are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962;
- (iii) The exporter, M/s Al Rumana Agro Commodities, having IEC No. 0515029459 for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) of the Customs Act, 1962.

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

13.2. I find that the exporter declared the impugned rice to be exported under Shipping Bill No. 9987812 dated 18.05.2024 declared as "**Basmati Rice**" under **CTH-10063020** but, as per the Test Report, the consignment of the exported goods is found to be "**Broken Rice**" due to percentage of Broken Kernel found more than tolerance limit for Basmati Rice as specified in above said Gazette Notification and same classifiable under **CTH-10064000**.

13.3. In view of above, as per the test report and data produced before me, I find that the proper classification of goods "Broken Rice" is 10064000 instead of declared CTH 10063020 for "Basmati Rice".

13.4. I find that the goods attempted to be exported are found as mis-declared and mis-classified and the exporter also accepted the goods to be exported are Broken Rice and not Basmati Rice, and therefore, I find that the goods are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962.

13.5. 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 ¹f²/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.

13.6. I find that the impugned rice to be exported under Shipping Bill No. 9987812 dated 18.05.2024 found to be "**Broken Rice**", hence the exporter has mis-declared and mis-classified the impugned goods to avoid the prohibition, and therefore, the same is liable for confiscation under **Section 113(d) & 113(i)** of the Customs Act, 1962. Further, I find that the impugned goods i.e. Broken Rice are Prohibited goods, hence, penalty is imposable in the case under **Section 114(i)** of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.

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

ORDER

- (i) I order to reject the description as well as classification of the goods to be exported vide Shipping Bill No. 9987812 dated 18.05.2024 i.e. "Basmati Rice" under CTH-10063020 and order to be re-classified as "Broken Rice" under CTH-10064000;
- (ii) I order to confiscate the Impugned goods covered under Shipping Bill No. 9987812 dated 18.05.2024 having FOB Value Rs. 20,40,595/- under Section 113(d) & 113(i) of the Customs Act, 1962. However, I give the option to the exporter to redeem the same for Back to Town against payment of a Redemption Fine of Rs. 4,00,000/- (Rupees Four Lakhs only) under Section 125 of the Customs Act, 1962;
- (iii) I order to impose and recover Penalty of Rs. 2,00,000/- (Rupees Two Lakhs Only) on the exporter under Sections 114(i) of the Customs Act, 1962.

15. 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

Date: 01-10-2024 19:16:34

ADDITIONAL COMMISSIONER

ADC/JC-I-O/o Pr Commissioner-Customs-Mundra

F.No. CUS/DOCK/BTT/107/2024-Docks

Date : 01-10-2024

BY SPEED POST

5358

To,

M/s Al Rumana Agro Commodities,
Shop A 1/221 Gali 9 KH NO 270/228/1.
Afghani Chowk, Wazirabad,
Delhi -110084.

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

Received on behalf of the CB M/S Shakti Clg Agency


04/10/24
CHALH 3051

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