

	<p>सीमा शुल्क (निवारक) के आयुक्त का कार्यालय, सीमा शुल्क भवन, जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास, जामनगर (गुजरात) - 361001</p> <p>Office of the Commissioner of Customs (Preventive), 'Seema Shulk Bhavan', Jamnagar - Rajkot Highway, Near Victoria Bridge, Jamnagar (Gujarat) - 361 001</p> <p>Email: commr-custjmr@nic.in; adj-custjmr@nic.in</p>
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DIN – 20241271MM000000797E

1.	फ़ाइल क्रमांक/ File Number	F. No. CUS/6979//2024-ADJN
2.	मूल आदेश क्रमांक/ Order-in-Original No.	10/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह / Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक Date of issue / आदेश जारी किया	13.12.2024 13.12.2024
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	Show Cause Notice waived as requested by the Noticee.
6.	नोटिसी का नाम/ Name of Noticee	M/s. Real Dehydrates, Survey No. 143-P-5, Bhanvad Village, Savarkundla Road, Mahuva, Dist.-Bhavnagar

01.	इस आदेश की मूल प्रति संबन्धित व्यक्ति को निशुल्क प्रदान की जाती है। The original copy of this order is provided free of cost to the person concerned	
02.	इस मूल आदेश से व्यक्ति कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962 की धारा 128A(1)(a), सीमा शुल्क (अपील) नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है। फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। (जिनमें से कम से कम एक प्रमाणित प्रति हो)।	
	आयुक्त अपील 7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद - 380 009	Commissioner (Appeals), 7 th Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380 009
	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 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 a certified copy).
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये 0.50 (पचास पैसे केवल) का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची - I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paisa only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान/ जुर्माना/ अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962, की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क (अपील) नियम, 1982 और सिस्टेट प्रक्रिया (प्रोसीजर) नियम, 1982 के सभी नियमों का पूरा पालन हुआ है। While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के 7.5% के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है। 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.

BREIF FACTS OF THE CASE:

M/s. Real Dehydrates (herein to be referred as 'Importer'), Survey No. 143-P-5, Bhanvad Village, Savarkundla Road, Mahuva, Dist.-Bhavnagar vide Shipping Bill No. 5676867 dated 29.11.2023 had exported goods as detailed under:

Sl. No.	Item descriptions	CTH	Qty. (In Kgs.)
1.	Onion Granules Toasted (A Grade) (ETO TREATED)	07122000	26498

2. The consignee viz. M/s National Lecithin, USA vide their letter dated 30.07.2024 have informed the exporter viz. M/s Real Dehydrates that due to uneven cut size of Onion Granules 24-40 Mesh Toasted, they couldn't use the same in their production process. It didn't match with their specification; therefore, they requested M/s Real Dehydrates to take the consignment back to India.

3. Accordingly, the Importer viz., M/s Real Dehydrates have partially re-imported the said consignment i.e. Onion Granules Toasted (A Grade) (ETO TREATED) through their Customs Broker, M/s.Saanch Logistics vide Bill of Entry No. 4871160 dated 03.08.2024 for clearance of Re-Import of above mentioned goods.

4. The said Bill of Entry was assessed by the assessment group who assigned examination order through EDI System. Therefore, as per examination order, the goods were examined by the Customs officers and examination report was also submitted in the system on 12.08.2024, which read as follows:

"Special observation: As directed, opened and examined the cargo after verifying the seal no and container number in presence of CHA and the supervision of the Superintendent (Examination) and Assistant Commissioner. The goods appear to be as per the description in BE/Invoice/ PI. The Goods appear to same as that exported vide SB No. 5676867 dated 29.11.2023. The re-import is within 01 year. As per the weighment slip the net weight of the container is 8050 Kgs. The Sample has been drawn vide test memo no. Imp/114/24-25 dated 09.08.2024 and sent to CRCL for testing. As on date, the export incentive has not been reversed by the importer."

5. M/s Real Dehydrates has already reversed the applicable export incentive viz. RODTEP and Drawback with interest vide Challan No. CUS/216/24-25 dated 13.08.2024 of Rs. 51,171/- (Rupees fifty one thousand, one hundred and seventy one only). Further, in compliance of provisions of Circular No. 36/2001-Cus dated 15.06.2021 as amended from time to time, the representative sample of all the items covered in said Bill of Entry was sent to CRCL Vadodara for Testing vide Test Memo No. IMP/114/24-25 dated 09.08.2024. The test report of the said consignment was received from CRCL Vadodara vide Test Report no. RCL/PIP/IMP/2720 dated 21.08.2024; wherein it was reported that, the sample does not meet the specification under the regulation 2.9.28(I) of Food Safety and Standards (food product and food additive) Regulation, 2011 and provision of Food Safety and Standards Act, 2006 and rules made thereunder.

6. The FSSAI Officer, CH Pipavav vide their office letter F. No. VIII/29-09/Sample/Import/GPPL/23-23 dated 09.09.2024 sent duplicate sample of Onion Granules Toasted (A Grade) (ETO TREATED) to the CRCL, New Delhi for re-testing of the sample.

7. The Director (RL), CRCL, New Delhi vide letter F. No. 26-Cus/C-89/2024-25 dated 14.11.2024 issued re-testing report; wherein it is reported, "the sample u/r does not meet requirement of Dehydrated Onion as per Food Safety and Standards Regulation (FSSR 2011) and IS 4452:2009 (Reaffirmed 2019) in respect of Moisture, Total Ash & Acid Insoluble Ash." On the basis of this Report, the FSSAI Section, CH Pipavav has issued a Non-Conformance Report No. 03/GPPL/2024-25 dated 14.11.2024, in Form-4, in the light of the directions/ instructions contained in Chapter-X of Food Safety and Standards (Import) Regulations, 2017, for the subject import case.

7.1 The relevant paras of Chapter-X of Food Safety and Standards (Import) Regulations, 2017, is reproduced hereunder:

"Regulation 14. No Objection Certificate. — (1) The Authorised Officer shall issue a 'no objection certificate' in FORM – 3, after assessing the safety of food being imported under these regulations under his seal and signature for allowing import of food, and shall communicate such order in a specified manner to the customs and the Food Importer.

(2) The no objection certificate.....

(5) The Authorised Officer shall issue a non-conformance report in FORM – 4 specifying the grounds mentioned in these regulations for refusal, wherever the clearance of the imported food is refused, under his seal and signature, and shall communicate such order in a specified manner to the customs, Food Authority and the Food Importer.

(7) Based on the findings and recommendations in non- conformance report of the laboratory analysis and subsequent confirmation from the referral laboratory, if contamination or presence of microbiological organisms is likely to pose a significant risk to public health, the Authorised Officer, with the prior approval the Food Authority shall pass necessary orders for mandatory destruction of articles of food in FORM- 5."

7.2 The Non-conformance Report No. 03/ GPPL/2024-25 dated 14.11.2024 (in Form-4 of Food Safety and Standards (Import) Regulations, 2017) was issued by the FSSAI Section, CH Pipavav, on the basis of Test Results issued pursuant to sample drawn by Custom House, Pipavav. The said Non-Conformance Report *inter alia* stated that the all the consignment is rejected and not to be cleared from this port on following grounds:

- i. As per Lab Test Report F. No. 26-Cus/C-89/2024-25 dated 14.11.2024 (CRL No. 170 dated 18.09.2024), the moisture (% by mass) is 15.31% while the specified limit as per FSSR, 2011 is 8.0%.
- ii. As per Lab Test Report F. No. 26-Cus/C-89/2024-25 dated 14.11.2024 (CRL No. 170 dated 18.09.2024), total Ash (% by mass) is 6.37% while the specified limit as per FSSR, 2011 is 5.0%.
- iii. As per Lab Test Report F. No. 26-Cus/C-89/2024-25 dated 14.11.2024 (CRL No. 170 dated 18.09.2024), Acid Insoluble Ash (% by mass) is 1.39% while the specified limit as per FSSR, 2011 is 0.5%.

8. From the above, it appeared that the goods declared as "Onion Granules Toasted (A Grade) (ETO TREATED) having quantity 7460 Kgs with assessable value of Rs. 17,05,367/- (Rupees seventeen lakh, five thousand, three hundred and sixty seven only) covered under the said Bill of Entry has not been allowed the clearance for home consumption by the FSSAI Authorities, in as much as, the cargo does not conform to provisions of FSS Act, Rules and Regulations made thereunder. Prima facie, it appeared that said cargo is mainly for human consumption and such conditions is not fulfilled during FSSAI Test, hence, the imported goods may not be allowed for home consumption from Pipavav port. Due to the failure of sample of imported cargo, it appeared that the Importer has violated the provisions of Food Safety & Standards Act, 2006 regarding importation of food/eligible items as discussed in the foregoing paras and it is therefore, the said re-imported goods falls under the category of 'Prohibited goods' as defined under Section 2(33) of the Customs Act, 1962 & liable for confiscation under Section 111(d) & Section 111 (o) of the Customs Act, 1962 & subsequent penalty under Section 112(a)(i) of the Customs Act, 1962.

LEGAL PROVISIONS APPLICABLE IN CASE:

9. Following provisions of law are applicable in the present case:

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;

Section 111 (d) and 111 (o) of the Customs Act, 1962:

111. Confiscation of improperly imported goods, etc.

(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;

(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;

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, 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 1 [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:

SHOW CAUSE NOTICE AND PERSONAL HEARING:

10. The Importer vide their letter dated 28.10.2024 has stated that they are having Export Order for the same product and they are willing to export the same to another buyer after changing its packing. They have further requested vide their letter dated 07.11.2024 to grant them permission for re-export of the goods after repacking within custom premises and also requested to waive the requirement of issuance of show cause notice and opportunity of personal hearing too.

DISCUSSION AND FINDINGS:

11. I have carefully gone through the case records. The Importer vide their letter dated 07.11.2024 have requested for waiver of the show cause and personal hearing in the matter. Thus, I find that principles of natural justice as provided under 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 re-imported goods i.e. "Onion Granules Toasted (A Grade) (ETO TREATED)" with quantity 7460 Kgs having assessable value of Rs. 17,05,367/-, which is not fit for home consumption in view of the test report issued by CRCL Vadodara vide Test Report no. RCL/PIP/IMP/2720 dated 21.08.2024 as well as re-test report issued by the Director (RL), CRCL, New Delhi vide letter F. No. 26-Cus/C-89/2024-25 dated 14.11.2024 *ibid*, are liable for confiscation under Section 111 (d) & Section 111 (o) of the Customs Act, 1962 or otherwise;
- ii. Whether the Importer is liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

11.1 I find that, sample of goods re-imported vide Bill of Entry No. 4871160 dated 03.08.2024 was sent to CRCL Vadodara for testing vide Test Memo No. IMP/114/24-25 dated 09.08.2024. The test report of the said consignment was received from CRCL Vadodara vide Test Report no. RCL/PIP/IMP/2720 dated 21.08.2024; wherein it was reported that, the sample does not meet the specification under the regulation 2.9.28(I) of Food Safety and Standards (food product and food additive) Regulation, 2011 and provision of Food Safety and Standards Act, 2006 and rules made there under. I further find that, the FSSAI Officer, CH Pipavav vide their office letter F. No. VIII/29-09/Sample/Import/GPPL/23-23 dated 09.09.2024 had sent duplicate sample of Onion Granules Toasted (A Grade) (ETO TREATED) to the CRCL, New Delhi for re-testing of the sample, to which the Director (RL), CRCL, New Delhi vide letter F. No. 26-Cus/C-89/2024-25 dated 14.11.2024 issued re-testing report; wherein it is reported, "the sample u/r does not meet requirement of Dehydrated Onion as per Food Safety and Standards Regulation (FSSR 2011) and IS 4452:2009 (Reaffirmed 2019) in respect of Moisture, Total Ash & Acid Insoluble Ash."

11.2 I find that, the Importer vide letter dated 28.10.2024 has stated that they are having Export Order for the same product and they are willing to export same goods i.e. "Onion Granules Toasted (A Grade) (ETO TREATED)" with quantity admeasuring 7460 Kgs having assessable value of Rs. 17,05,367/- to another buyer after changing its packing and they have further requested vide their letter dated 07.11.2024 to grant them permission for re-export of the goods after repacking within customs premises.

11.3 From the above, I find that the goods declared as "Onion Granules Toasted (A Grade) (ETO TREATED) having quantity admeasuring 7460 Kgs with assessable value of Rs. 17,05,367/- (Rupees seventeen lakh, five thousand, three hundred and sixty seven only) covered under the said Bill of Entry has not been allowed the clearance for home consumption by the FSSAI Authorities, in as much as, the cargo does not conforms to provisions of FSS Act, Rules and Regulations made thereunder. Prima facie, it is seen that said cargo is mainly for human consumption and such conditions is not fulfilled during FSSAI Test, hence, the imported goods may not be allowed for home consumption from Pipavav port and same is required either to be destroyed or re-exported. Due to the failure of sample of imported cargo, I find that though there is no deliberate attempt of import of prohibited goods on the part of Importer, however, he has violated the provisions of Food Safety & Standards Act, 2006 regarding importation of food/eligible items as discussed in the foregoing paras and it is therefore, the said re-imported goods follows under the category of 'Prohibited goods' as defined under Section 2(33) of the Customs Act, 1962 & therefore, are liable for confiscation under Section 111(d) & Section 111 (o) of the Customs Act, 1962.

11.4 In view of above, I find that as the Importer has violated provisions of Food Safety and Standards Act, 2006 and rules made thereunder, thus, the re-imported goods are liable for confiscation under Section 111(d) & Section 111 (o) of the Customs Act, 1962, it is therefore, I find that the Importer has rendered themselves liable for penal action under the provisions of Section 112 (a) (i) of the Customs Act, 1962.

11.5 However, I find that there is no malafide intention on part of the importer. Hence, I take a lenient view in the matter.

12. I find that, the Importer has requested for permission to re-export the goods to their new overseas buyer after changing its packing within customs premises. 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 re-exported after necessary adjudication proceedings. I further find that, the provision of Food Safety and Standard Act, 2006 are not specifically restricting the re-export of such test failed consignments. Therefore, I find that the option of re-export can be availed by the Importer after payment of redemption fine in lieu of confiscation on the goods in terms of Section 125 of the Customs Act, 1962.

12.1 Section 125 (1) of the Customs Act, 1962, stipulates, "Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the 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."

12.2 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 Importer to pay fine in lieu of confiscation on the subject re-imported goods.

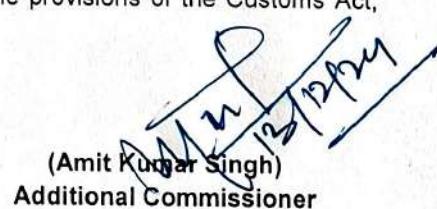
13. I view of the aforesaid discussions and findings, I pass the following order:

ORDER

(i) I order to confiscate re-imported goods viz. "Onion Granules Toasted (A Grade) (ETO TREATED) having quantity admeasuring 7460 Kgs with assessable value of Rs. 17,05,367/- (Rupees seventeen lakh, five thousand, three hundred and sixty seven only) imported vide Bill of Entry No. 4871160 dated 03.08.2024 under Section 111 (d) & Section 111 (o) of the Customs Act, 1962. However, I give an option to the Importer to re-export the said confiscated goods within 90 days on payment of redemption fine of Rs. 60,000/- (Rs. Sixty Thousand Only) under Section 125 of the Customs Act, 1962.

(ii) I impose a penalty of Rs.25,000/- (Rs. Twenty Five Thousand Only) on the Importer, M/s. Real Dehydrates under Section 112(a)(i) of the Customs Act, 1962.

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


(Amit Kumar Singh)
Additional Commissioner

F.No. CUS/6979//2024-ADJN

Date: 13.12.2024

To,
M/s. Real Dehydrates,
Survey No. 143-P-5, Bhanvad Village,
Savarkundla Raod, Mahuva,
Dist.-Bhavnagar.

Copy to:

1. The Assistant Commissioner, Customs House – Pipavav.
2. Guard File.