

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271423/271426	
A. File No.	:	CUS/ASS/MISC/178/2025-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/DC/AAK/794/2024-25 dated 20.02.2025
C. Passed by	:	Dr. Asrar Ahmad Kichloo, Deputy Commissioner of Customs, Custom House, AP & SEZ, Mundra
D. Date of order /Date of issue	:	20.02.2025 / 20-02-2025
E. Show Cause Notice No. & Date	:	SCN and PH Waiver
F. Noticee(s)/Party/ Exporter	:	M/s HBH Foods Export Private Limited (IEC No. AAGCH7677F), Shop no 34-35-36, Hiramani Complex, Hindorna, Amreli, Gujarat-365560
G. DIN	:	20250271MO000000AED6

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,
 7वीं 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 सं-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 झूटी/ 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 सभी अन्य के, अधिनियम शुल्क सीमा और 1982, अपील) नियम। चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों

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. HBH Foods Export Private Limited (IEC No. AAGCH7677F), Shop no 34-35-36, Hiramani Complex, Hindorna, Amreli, Gujarat-365560 (hereinafter referred to as the "exporter" for brevity), filed Shipping Bill No. 8272975 dated 18.02.2025 for "Indian Fresh White Onion 55+/70+ & Red Onion 55+" under CTH 07031019 at Mundra Port through their Customs Broker, M/s. Service Bureau Logistics LLP. The consignment had an FOB value of ₹4,91,589/- and a total quantity of 28 MT.

2. Observations and Queries Raised:

2.1 During assessment of the aforementioned shipping bill, it was noted by the Assessing Officer that the goods declared as "Indian Fresh Onion" under CTH 07031019 are dutiable as per Notification No. 43/2024-Customs dated 13.09.2024 and also they claimed RoDTEP amount on dutiable goods. However, the Cess amount was not mentioned in the documentation. In light of this, the following query was raised on 18.02.2025:

"Export of Onions is dutiable as per Notification no 24/2024-Customs dated 03.05.2024 as amended vide Notification no. 43/2024 dated 13.09.2024. However, no Cess details found. Also Explain RoDTEP Applicability"

3. Response from the Exporter:

3.1 In response, M/s. HBH Foods Export Private Limited, vide their letter dated 19.02.2025, received on 20.02.2025 in this office, have submitted their reply, which is re-produced as under: -

"due to oversight mistake of our filling person as per previous S/bill duplicate job has been created due to which by-mistake RoDTEP was added in S/bill and due to error in system CESS was removed; that we don't need personal hearing, Show cause notice;

However, we are ready to pay to CESS duty amount, fine & penalty; also we will not claim for RoDTEP. As per refer container and plugin charges and detention/demurrage charges are very high and this shipment is critical to shipper and vessel cut off is near by..."

3.2 Exporter/CB also submitted copy of email bearing quotation of Freight of 6400 USD from M/s. Oasis Shipping Pvt Ltd, Mumbai, India.

3.3 From the submissions of the exporter, it has been found that they have accepted their fault and have requested to decide on merit without issuing any SCN and personal hearing in the

matter.

4. Summary of the Case

4.1 Based on the above, it is observed that the exporter has attempted to export "Indian Fresh Onion" without paying export duty, which is made dutiable at the rate of 20%, as per Notification No. 43/2024-Customs dated 13.09.2024. The export duty @20% on FOB value Rs. 4,91,589/- is amounting to Rs. 98,318/-.

4.2 Further, as per Para 4.55 of the Foreign Trade Policy 2015-20 issued by the DGFT, goods subject to export duty are ineligible for rebate under the RoDTEP scheme. The exporter had erroneously claimed RoDTEP of ₹9,340/- (@1.9%) in Shipping Bill No. 8272975 dated 18.12.2024, making this claim liable for rejection.

4.3 Since the exporter, as detailed in the foregoing paragraphs, initially did not intend to pay the duty on dutiable goods and erroneously claimed RoDTEP, the goods are liable for confiscation under Section 113(i) & 113(ja), making the exporter liable for penalties under Section 114(ii) & 114(iii) of the Customs Act, 1962. The relevant portion of the Section 113(i), 113 (ja), 114(ii) & 114(iii) 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:

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

(ja) any goods entered for exportation under claim of remission or refund of any duty or tax or levy to make a wrongful claim in contravention of the provisions of this Act or any other law for the time being in force;

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.

4.4 Further, in view of the facts, it is observed that the exporter has tried to export dutiable goods i.e. "Indian Fresh Onion" without paying applicable duty of the subject S/bill & erroneously claimed RoDTEP. Therefore, the exporter has contravened the provisions of Section 50 of Customs Act, 1962 and rendered the impugned goods liable for confiscation under Section 113(i) & 113(ja) 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(ii) & 114(iii) of the Customs Act, 1962.

The Sections 50 of the Customs Act, 1962 is re-produced here-in-below:

SECTION 50. Entry of goods for exportation. -

(1) ..

(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. In view of the above, it is observed that:

- i. The goods i.e. "Indian Fresh Onion", mentioned in the Shipping Bill no. 8272975 dated 18.02.2025 under CTH 07031019 are dutiable as per Second Schedule-Export Tariff, with rate of duty @20%.
- ii. The RoDTEP claimed by the exporter is liable to be rejected under Shipping Bill No. 8272975 dated 18.02.2025, as RoDTEP claimed on goods subject to export duty is ineligible, as per Para 4.55 of the Foreign Trade Policy 2015-20 issued by the DGFT.
- iii. Impugned goods covered under Shipping Bills Nos. 8272975 dated 18.02.2025 under CTH 07031019, are liable for confiscation under Section 113 (i) & 113(ja) of the Customs Act, 1962;
- iv. The exporter, M/s. HBH Foods Export Private Limited (IEC No. AAGCH7677F), for rendering the impugned goods under confiscation is liable for penal action under Section 114(ii) & 114(iii) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING:

6. The exporter vide their letter dated 19.02.2025, received on 20.02.2025 in this office, submitted that they are ready to pay the applicable fines and penalties; that they also submitted that they don't want to receive any Show Cause Notice or Personal hearing, in this regard.

DISCUSSION AND FINDINGS:

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7. I have carefully gone through the brief facts of the case and the applicable provisions of the Customs Act/Rules. The exporter requested for waiver of Show Cause Notice and personal hearing. Thus, I find that the principles of natural justice as provided in Section 122A of The Customs Act 1962 have been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on record.

7.1 The issues to be decided by me are:

- i. Whether or not, the goods i.e. "Indian Fresh Onion", mentioned in the Shipping Bill no. 8272975 dated 18.02.2025 under CTH 07031019 are dutiable as per Second Schedule-Export Tariff, with rate of duty @20%.
- ii. Whether or not, the RoDTEP claimed by the exporter is liable to be rejected under Shipping Bill No. 8272975 dated 18.02.2025, as RoDTEP claimed on goods subject to export duty is ineligible, as per Para 4.55 of the Foreign Trade Policy 2015-20 issued by the DGFT.
- iii. Whether or not, impugned goods covered under Shipping Bills Nos. 8272975 dated 18.02.2025 under CTH 07031019, are liable for confiscation under Section 113 (i) & 113(ja) of the Customs Act, 1962;
- iv. Whether or not, the exporter, M/s. HBH Foods Export Private Limited (IEC No. AAGCH7677F), for rendering the impugned goods under confiscation is liable for penal action under Section 114(ii) & 114(iii) of the Customs Act, 1962.

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

7.2 I find that as per the Second Schedule-Export Tariff, Export duty @20% is leviable on export of "Onion" under CTH 07031019. Therefore, the goods i.e. "Indian fresh Onion" under CTH 07031019 attracts duty @20%.

7.3 I find that the Exporter had tried to take the undue benefit in the form of RODTEP under Shipping Bill No. 8272975 dated 18.02.2025, as RoDTEP claimed on goods subject to export duty is ineligible, as per Para 4.55 of the Foreign Trade Policy 2015-20 issued by the DGFT. Hence, the same is liable for rejection.

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

"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.
 ”

7.5 I find that impugned goods to be exported under Shipping Bill No. 8272975 dated 18.02.2025 are liable for confiscation under 113 (i) & 113(ja) of the Customs Act, 1962. Therefore, penalty is imposable under Section 114(ii) & 114(iii) of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.

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

ORDER

- i. I order to levy the duty @20% on goods i.e. “Indian fresh Onion” under CTH 07031019 in the Shipping Bill No. 8272975 dated 18.02.2025, having FOB Value of ₹4,91,589/- and accordingly to pay applicable duty amounting to Rs. 98,318/-;
- ii. I order to reject erroneously claimed RoDTEP of ₹ 9,340/- (@1.9%) on FOB Value of ₹4,91,589/-, on the Shipping Bill No. 8272975 dated 18.02.2025;
- iii. I order to confiscate the impugned goods of the Shipping Bills No. 8272975 dated 18.02.2025, having total FOB value as ₹4,91,589/- under Section 113 (i) & 113(ja) of the Customs Act, 1962. However, I give the option to the exporter to redeem the same, against payment of a **Redemption Fine of Rs 1,00,000/- (Rupees One Lakh Only)** under Section 125 of the Customs Act, 1962;
- iv. I order to impose and recover **Penalty of Rs 9,830/- (Rupees Nine Thousand Eight Hundred Thirty Only)** on the exporter under Section 114(ii) of the Customs Act, 1962;
- v. I order to impose and recover **Penalty of Rs 28,020/- (Rupees Twenty Eight Thousand Twenty Only)** on the exporter under Section 114(iii) of the Customs Act, 1962;

9. 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.

(Dr. Asrar Ahmad Kichloo)
 Deputy Commissioner of Customs,
 DC/AC-II-O/o Pr Commissioner-Customs-Mundra

F. No. CUS/ASS/MISC/178/2025-EA

Date: 20-02-2025

BY SPEED POST

To,
 M/s. HBH Foods Export Private Limited (IEC No. AAGCH7677F),
 Shop no 34-35-36, Hiramani Complex,
 Hindorna, Amreli, Gujarat-365560.

Copy to:-

(1) The Deputy/Assistant Commissioner, TRC/RRA/EDI, Custom House Mundra.

(2) Guard File.