

	<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 – 20241171MM000000A83D

1.	फ़ाइल क्रमांक/ File Number	F. No. CUS/5851/2024-ADJN
2.	मूल आदेश क्रमांक/ Order-in-Original No.	09/ 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	27.11.2024 27.11.2024
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-05/2024-25 dated 12.11.2024
6.	नोटिसी का नाम/ Name of Noticee	M/s Regenta M Foods, Plot No. 2A & 2B, Survey No. 287, Panchratna Industrial Estate, Ahmedabad (Gujarat) – 382 210

01.	इस आदेश की मूल प्रति संबंधित 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 <sup>th</sup> 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.



**Brief facts of the case:**

**M/s. Regenta M Foods**, Plot No. 2A & 2B, Survey No. 287, Panchratna Industrial Estate, Ahmedabad – 382210 (hereinafter referred to as “**the Importer**”) having IEC No. ABGFR6390B, filed Bill of Entry No. 5168230 dated 21.08.2024 (hereinafter referred to as the “**said Bill of Entry**”) under Section 46 of the Customs Act, 1962 for importing goods *viz.* (1) Red Lotus Flour – 325 Carton (1Kg X 10), (2) Chilli Sauce – 400 Carton (570 Grams X 12), (3) Aromat Seasoning Power Jar - 100 Carton (1Kg X 06), (4) Glass Noodle (Export PKT) – 75 Carton (500 Grams. X 20), (5) Pickled Ginger – 150 Carton (1500 Grams X 06), (6) Tempura Flour – 325 Carton (1Kg X 10), as per Invoice No. EPI-2408-002 dated 02.08.2024 issued by M/s. Orchid Plus Co. Ltd., 719, KPN Tower, 11<sup>th</sup> Floor, Raina 9 Road, Bangkapi, Huaykwang, Bangkok 10310, Thailand and Bill of Lading bearing No. NAM9404848 claiming the benefit of Notification No. 46/2011-Cus dated 01.06.2011, so as to avail the exemption from payment of Basic Customs duty on the strength of Country of Origin Certificate as envisaged under ASEAN-INDIAN FREE TRADE PREFERENTIAL TARIFF AGREEMENT for import of goods from Thailand. Details pertaining to the CTH, description, quantity, Unit price, value etc., of the said imported goods as declared by the Importer in the said Bill of Entry as well as declared in the Bill of Lading, Commercial Invoice, packing list etc. are as per Table-A follows:

**TABLE-A**

Sl. No.	Description of goods	Chapter Subheading No.	Quantity (Carton)	Unit price per Carton (in \$)	Assessable value (in Rs.) (1\$=Rs.84.85)
1	Red Lotus Flour – 325 Carton (1Kg X 10)	19012000	325	11.83	326227.04
2	Chilli Sauce – 400 Carton (570 Grams.X 12)	21039020	400	14.20	481947.91
3	Aromat Seasoning Power Jar - 100 Carton (1Kg X 06)	21039040	100	32.25	273641.25
4	Glass Noodle (Export PKT) – 75 Carton (500 Grams. X 20)	19023090	75	29.40	187094.25
5	Pickled Ginger – 150 Carton (1500 Grams X 06)	20019000	150	21.00	267277.46
6	Tempura Flour– 325 Carton (1Kg X 10)	19012000	325	11.59	319608.74
					1855796.65

2. During the examination of the said goods, it was noticed that, there was mismatch in description and quantity of the goods declared by the Importer at the time of filing the said Bill of Entry and that of physical quantity of goods actually found during the course of examination *i.e.* there was shortage of 125 Cartons of Red Lotus Flour and 75 Cartons of Tempura Flour while in place of these, 200 Cartons [150 Cartons of Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10)] were found concealed by the declared consignment, although same were neither declared in Invoice No. EPI-2408-002 dated 02.08.2024 nor in Bill of Entry No. 5168230 dated 21.08.2024.

3. Section 46(4) of Customs Act, 1962 stipulates, the importer is required to make/subscribe to a declaration as regard to the truth of the contents of the Bill of Entry submitted for assessment of Customs Duty, which is reproduced herein below *in verbatim* for the sake of clarity:

*“Section 46(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.”*

3.1 In view of the above provisions, it was obligatory on the part of the Importer to have declared the CTH, quantity, description, etc. of imported goods in the correct manner; however, it appeared



that the Importer had mis-declared the description and quantity of the imported goods in order to evade payment of correct amount of Customs duty leviable thereon. Thus, it appeared that the importer had contravened the provisions of sub-section (4) of Section 46 of the Customs Act, 1962, inasmuch as they had mis-declared description and quantity of the imported goods in the Declaration of Bill of Entry filed under the provisions of Section 46(4) of Customs Act, 1962.

4. Since, the description and quantity of the imported goods found during the course of examination of imported goods were not as per declaration in the import documents i.e. Bill of Entry, Bill of Lading, Invoice, it appeared that the Importer had mis-declared the quantity and description of imported goods during the course of self-assessment of the said Bill of Entry as envisaged under Section 17(1) of the Customs Act, 1962. That on examination of imported goods by the Officers of Custom House - Pipavav the fact w.r.t. the mis-declaration of description and quantity of the subject goods came on record and thereby it appeared that the said Importer had contravened the provisions of Customs Act, 1962 as discussed above and therefore, it appeared that the said goods were liable to seizure under Section 110 of the Customs Act, 1962 under the reasonable belief to be liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962.

4.1 Section 2(39) of the Customs Act, 1962 defines "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113. It is therefore, the goods mis-declared in the quantity with the intention to evade customs duty appeared to have fallen in the category of "smuggled goods".

4.2 Section 119 of the Customs Act, 1962 regarding Confiscation of goods used for concealing smuggled goods stipulates, "*Any goods used for concealing smuggled goods shall also be liable to confiscation.*" It was therefore, the remaining goods which were declared at the time of filing of Bill of Entry No. 5168230 dated 21.08.2024 and which were used to conceal the smuggled goods alongwith the other imported goods were also appeared to be liable to confiscation under Section 119 of the Customs Act, 1962 alongwith the mis-declared goods.

4.3 It was therefore the entire consignment having total value of Rs.20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) of imported goods i.e. goods declared in Bill of Entry No. 5168230 dated 21.08.2024 viz. Red Lotus Flour, Chilli Sauce, Aromat Seasoning Powder Jar, Glass Noodle (Export PKT), Pickled Ginger and Tempura Flour (mentioned at Sl. No. 1 to 6 of the Table-B below) and undeclared goods viz. Cartons [150 Cartons of Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10)] concealed by declared goods (mentioned at Sl. No. 7 & 8 of the Table-B below), both were placed under seizure in terms of Section 110 of the Customs Act, 1962 vide Panchnama dated 09.09.2024 under the reasonable belief that, the same were liable to be confiscated under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962. Details of the goods which were seized vide Panchnama dated 09.09.2024 is as under:

TABLE-B

Sl. No.	Product Description	Packing	Units	Quantity
1	Red Lotus Flour	1 Kg X 10	Carton	200
2	Chilli Sauce	570 Grams X 10	Carton	400
3	Aromat Seasoning Powder Jar	1 Kg X 6	Carton	100
4	Glass Noodle (Export-PKT)	500 Grams X 20	Carton	75
5	Pickled Ginger	1500 Grams X 6	Carton	150
6	Tempura Flour	1 Kg X 10	Carton	250
7	Special Soft Flour	1 Kg X 10	Carton	50
8	Glutinous Rice Flour	1 Kg X 10	Carton	150



5. Further, the representative sample of all imported goods were drawn and sent to the Assistant Chemical Examiner, C.Ex. & Customs Laboratory, Vadodara for Chemical Test who vide Test Report dated 09.10.2024 confirmed the goods are "fit for human consumption in respect to biological analyzed parameters".

6. In order to ascertain the value of mis-declared goods, the Importer was requested to produce the Tax Invoice, if any, available w.r.t. earlier import of Cartons Glutinous Rice Floor and Cartons of Special Soft Flour, who in turn had submitted copy of Tax Invoice No.23-24/F002764 dated 05.06.2023 and No.24-25/F005793 dated 13.07.2024 both issued by M/s. Faridi Impex Pvt. Ltd., Mumbai showing purchase of various goods including Glutinous Rice Flour (CTH – 11029022) and Hongkong Flour (also known Special Soft Flour CTH – 19049000) from local market. Therefore, the total assessable value of the goods was taken as Rs.20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) on the basis of Assessable Value w.r.t. Red Lotus Flour, Chilli Sauce, Aromat Seasoning Power Jar, Glass Noodle (Export PKT), Pickled Ginger and Tempura Flour as declared by the Importer in the said Bill of Entry and on the basis of copy of Tax Invoice No.23-24/F002764 dated 05.06.2023 w.r.t. quantity of Hong Kong Flour (also known Special Soft Flour CTH – 19049000) and on the basis of Invoice No.24-25/F005793 dated 13.07.2024 w.r.t. quantity of Glutinous Rice Flour (CTH – 11029022), as produced by the Importer to determine assessable value in respect of mis-declared goods.

7. In terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs authority for clearance of the imported goods, it is duty of the Importer to declare the accuracy and completeness of the information given therein. The law demands accuracy and completeness of the information to be declared by the Importer. As the Importer has been working under the era of self-assessment, where they have been given liberty to declare every aspect of an imported consignment from classification to declaration of value of the goods or levy of duty at applicable rate, therefore, it was the responsibility of the Importer to place correct facts and figures before the Assessing Authority. The self-assessment of Customs duty has been introduced in Customs w.e.f. 08.04.2011 by Section 38 of the Finance Act, 2011 under which Importer shall self-assess the duty leviable on import of the goods. In the instant case, it appeared that the Importer had failed to comply with the requirement of law and had wilfully mis-declared 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) that these goods were found concealed by the goods declared in the Bill of Entry. Therefore, it appeared that the Importer failed in presenting Bills of Entry in terms of its accuracy and completeness of the information given therein in contravention of Section 46 of the Customs Act, 1962. Thereby, it appeared that this resulted into the violation of Section 46 of the Customs Act, 1962.

8. It appeared that the Importer by resorting to the willful mis-declaration of 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) that concealing these goods by the goods declared in the Bill of Entry, had rendered the entire goods imported vide the said Bill of Entry liable for confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962.

9. Further, the Importer had claimed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, by producing the Country of Origin Certificate No. AI2024-0046556 in respect of the imported goods as envisaged under ASEAN-INDIAN FREE TRADE PREFERENTIAL TARIFF AGREEMENT for import of goods from Thailand. However, description, details and quantity of goods as per Country Of Origin (COO) did not match with the actual details of goods. Hence benefit of the exemption Notification No. 46/2011-Cus dated 01.06.2011 appeared to be not available to the Importer and liable to be denied to the Importer in respect of entire goods, as the entire goods were seized under Section 110 of the Customs Act, 1962 with reasonable belief of liable to confiscation under provisions of Section 111 (i) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962 as discussed herein above and accordingly, the Customs duty payable by the Importer appeared to be as per Table-C & D follows:



TABLE-C

Duty calculation in respect of declared imported goods (Detailed calculation is as per Annexure – A enclosed to the Show Cause Notice):

Sl. No.	Description of goods	Chapter Subheading No.	Quantity (Carton)	Unit price per Carton (in \$)	Assessable value (in Rs.) (1\$=Rs.84.85)	Total Customs duty
1	Red Lotus Flour – 325 Carton (1Kg X 10)	19012000	200	11.83	200755.10	79599
2	Chilli Sauce – 400 Carton (570 Grams.X 12)	21039020	400	14.2	481948.00	235962
3	Aromat Seasoning Power Jar - 100 Carton (1Kg X 06)	21039040	100	32.25	273641.25	133975
4	Glass Noodle (Export PKT) – 75 Carton (500 Grams. X 20)	19023090	75	29.4	187094.25	91601
5	Pickled Ginger – 150 Carton (1500 Grams X 06)	20019000	150	21	267277.50	130859
6	Tempura Flour- 325 Carton (1Kg X 10)	19012000	250	11.59	245852.88	97481
					1656569	769477

TABLE-D

Duty calculation in respect of mis-declared goods (Detailed calculation is as per Annexure – B enclosed to the Show Cause Notice)

Sl. No.	Description of goods	Chapter Subheading No.	Quantity (Carton)	Unit price per kg (in Rs.)	Assessable value (in Rs.)	Total Customs duty
1	Special Soft Flour (1Kg X 10)	19049000	50	225	112500	64058
2	Glutinous Rice Flour (1Kg X 10)	11029022	150	185	277500	91575
					390000	155633

In view of above, it appeared that, the Importer is liable to pay total Customs duty amounting to Rs.9,25,110/- [Rs.7,69,477/- + Rs.1,55,633/-] alongwith interest as applicable in terms of Section 28AA of the Customs Act, 1962 and consequential penalty as applicable under the Customs Act, 1962.

10. With the introduction of self-assessment & Risk Management System (RMS) under the Customs Act, faith is bestowed upon the Importer and therefore the Importer has been assigned with the responsibility of self-assessing goods under Section 17(1) of the Customs Act, 1962. It was therefore incumbent upon the Importer to properly declare the goods to be imported and self-assess the duty leviable thereupon in appropriate manner. However, it appeared that, in the instant case, the Importer had failed to do so by resorting to the mis-declaration by willful mis-statement of imported goods w.r.t. description & quantity i.e. 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) with an intention to evade payment of duties of Customs i.e. concealing mis-declared goods by the declared imported goods and therefore, it appeared that they had violated the provisions as laid down under Section 17(1) of the Customs Act, 1962. The Importer had also appeared to have willfully violated the provisions of Sub-Section (4) and 4(A) of Section 46 of the Custom Act, 1962. Accordingly, it appeared that the Importer was liable to pay Customs duty of Rs.9,25,110/- [Rs.7,69,477/- + Rs.1,55,633/-] under



Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

**12.** It appeared that the subject Bill of Entry was self-assessed resorting to willful mis-declaration of quantity of imported goods viz. 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10), concealing the same by the goods declared in the Bill of Entry, hence, it appeared that the Importer has rendered the said goods valued at Rs.20,46,569/- (R.16,56,569/- + Rs.3,90,000/-) liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962. Therefore, it appeared that, the Importer has rendered themselves liable for penalty under Section 112 of the Customs Act, 1962.

**13.** Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods while filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50 of the Customs Act, 1962, as amended). The Importer or Exporter at the time of self-assessment shall ensure that he declares the correct classification, applicable duty leviable on such goods, value and benefit of exemption notifications claimed, if any, in respect of the imported/ export goods while presenting Bill of Entry or Shipping Bill. However, in the instant case, it appeared that the Importer while self-assessment of Bill of Entry has resorted to willful mis-declaration of quantity of imported goods with intention to evade the duty of customs leviable thereupon. It therefore appeared that, the Importer has rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

**14.** In view thereof, a Show Cause Notice No. ADC-05/2024-25 dated 12.11.2024 was issued to M/s. Regenta M Foods, Plot No. 2A & 2B, Survey No. 287, Panchratna Industrial Estate, Ahmedabad – 382210 to show cause as to why:

- (i) customs duty of Rs.9,25,110/- [Rs.7,69,477/- + Rs.1,55,633/-] (Rupees nine lakh, twenty five thousand, one hundred and ten only) should not be demanded and recovered under Section 28(4) of the Customs Act, 1962;
- (ii) interest on duties of customs should not be recovered under Section 28AA of the Customs Act, 1962;
- (iii) penalty should not be imposed under Section 112 of the Customs Act, 1962;
- (iv) penalty should not be imposed under Section 114A of the Customs Act, 1962; and
- (v) the goods of value of Rs.20,46,569/- (R.16,56,569/- + Rs.3,90,000/-) (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) should not be held liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962 and why fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962.

**Defense Reply:**

**15.** The Importer vide their letter reference No. RMF/SCN/2024 dated 18.11.2024 submitted that, the goods were imported by them at Pipavav Port vide Bill of Entry No. 5168230 dated 21-08-2024 from Bangkok, Thailand under benefit of Preferential Trade Agreement (PTA) Certificate of Origin. They further submitted that Bill of Entry was filed on the basis of import documents, viz. Invoices, Packing List, BL, provided to them by their supplier M/s. Orchid Plus Co. Ltd., Bangkok and the same was assessed under RMS with duty exemption benefits. They further added that they were not at all aware that the consignments also contained some quantity of mis-declared cargo as mentioned in Show Cause Notice. They added that they have already taken up the matter with their supplier as how such mistake taken place at port of loading. Their supplier has agreed that it was a bona-fide mistake from their end. With this submission, the Importer requested that; 1) Duty exemption benefit on the goods which are found correct as declared may please be granted to them; and 2) They are ready to pay merit duty (with interest) on the goods (2 items) which were found mis-declared. The Importer vide the said letter dated 18.11.2024 sought waiver from the personal hearing and requested that a lenient view may please be taken and cargo may please be released else they will be in huge financial loss.

**15.1** The Importer vide their letter Ref. No. RMF/SCN/2024 dated 21.11.2024 (submission vide Email dated 22.11.2024, submitted the following case laws and requested to give them relaxation in view of their bona fide mistake:



- (i) ITC Ltd. Vs Commr of Customs, New Delhi (Import & General) – 2017(349)ELT154(Tri.Del)
- (ii) ITC Ltd. Vs Commr of Customs, New Delhi – 2016(343)ELT156(Del.)
- (iii) Commr of Customs (Import), JNCH, Nhava Sheva Vs Amrit Corp. Ltd – 2016(333)ELT340(Tri. Mum)
- (iv) Laxmi Marine Vs Commr of Customs, Kandla – 2010(260)ELT113(Tri. Ahmd.)

**Record of Personal hearing:**

16. The Personal Hearing was waived by the Importer vide their letter reference No. RMF/SCN/2024 dated 18.11.2024.

**Discussions and Findings:**

17. I have carefully gone through the Show Cause Notice, the written submissions filed by the Importer and the available records of the case and I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided:

- (i) Whether the goods of value Rs. 20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) are liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962 and fine in lieu of confiscation is to be imposed under Section 125 of the Customs Act, 1962;
- (ii) Whether Customs duty of Rs.9,25,110/- [Rs.7,69,477/- + Rs.1,55,633/-] (Rupees nine lakh, twenty five thousand, one hundred and ten only) should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962 ;
- (iii) Whether the Importer is liable for penalty under Section 112 of the Customs Act, 1962; and
- (iv) Whether the Importer is liable for penalty under Section 114A of the Customs Act, 1962.

18. I observe that, the Importer, filed the Bill of Entry No. 5168230 dated 21.08.2024 (hereinafter referred to as the "said Bill of Entry") under Section 46 of the Customs Act, 1962 for importing goods viz. (1) Red Lotus Flour – 325 Carton (1Kg X 10), (2) Chilli Sauce – 400 Carton (570 Grams X 12), (3) Aromat Seasoning Power Jar - 100 Carton (1Kg X 06), (4) Glass Noodle (Export PKT) – 75 Carton (500 Grams. X 20), (5) Pickled Ginger – 150 Carton (1500 Grams X 06), (6) Tempura Flour – 325 Carton (1Kg X 10), as per Invoice No. EPI-2408-002 dated 02.08.2024 issued by M/s. Orchid Plus Co. Ltd., 719, KPN Tower, 11<sup>th</sup> Floor, Raina 9 Road, Bangkapi, Huaykwang, Bangkok 10310, Thailand and Bill of Lading bearing No. NAM9404848, claiming the benefit of Notification No. 46/2011-Cus dated 01.06.2011, so as to avail the exemption from payment of Basic Customs duty on the strength of Country of Origin Certificate as envisaged under ASEAN-INDIAN FREE TRADE PREFERENTIAL TARIFF AGREEMENT for import of goods from Thailand. Details pertaining to the CTH, description, quantity, Unit price, value etc., of the said imported goods as declared by the Importer in the said Bill of Entry as well as declared in the Bill of Lading, Commercial Invoice, packing list etc. are as per aforesaid Table-A.

19. I find that, it was only noticed during the examination of the said goods that there was mismatch in description and quantity of the goods declared by the Importer at the time of filing the said Bill of Entry and that of physical quantity of goods actually found during the course of examination i.e. there was shortage of 125 Cartons of Red Lotus Flour and 75 Cartons of Tempura Flour while in place of these, 200 Cartons [150 Cartons of Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10)] were found concealed by the declared goods although same were neither declared in Invoice No. EPI-2408-002 dated 02.08.2024 nor in Bill of Entry No. 5168230 dated 21.08.2024. Further, I find that the Importer have neither approached their Foreign Supplier for the amendment of Country of Origin, Bill of Lading in consonance to the actual quantity of the imported goods found during the examination nor approached Customs Authority for amendment of IGM, Bill of Entry or produced any Email communication earlier to the date of import with to respect order placed by them with their foreign supplier, M/s. Orchid Plus Co. Ltd., Bangkok or any other supporting documentary evidence to establish their mistake as bonafide mistake. Moreover, I find that, in case the Importer would have imported actual goods declared by him while filing Bill of Entry, its value would have been almost half the value of goods imported by concealing, which strongly indicates towards the intention of the Importer behind willfully mis-declaration of goods to evade customs duty.



20. I observe that, Section 46(4) of Customs Act, 1962 stipulates, the Importer is required to make/subscribe to a declaration as regard to the truth of the contents of the Bill of Entry submitted for assessment of Customs Duty. I find that, in terms of Section 46 of the Customs Act, 1962, while presenting the Bills of Entry before the Customs authority for clearance of the imported goods, it is duty of the Importer to declare the accuracy and completeness of the information given therein. The law demands accuracy and completeness of the information to be declared by the Importer. As the Importer has been working under the era of self-assessment, where they have been given liberty to declare every aspect of an imported consignment from classification to declaration of value of the goods or levy of duty at applicable rate, therefore, it was the responsibility of the Importer to place correct facts and figures before the Assessing Authority. The self-assessment of Customs duty has been introduced in Customs w.e.f. 08.04.2011 by Section 38 of the Finance Act, 2011 under which Importer shall self-assess the duty leviable on import of the goods.

21. I find that, in view of the above provisions of Section 46 *ibid*, it was obligatory on the part of the Importer to have declared the CTH, quantity, description, etc. of imported goods in the correct manner; however, the Importer willfully mis-declared the description and quantity of the imported goods in order to evade payment of correct amount of Customs duty leviable thereon. It is therefore, I find that, the Importer contravened the provisions of sub-section (4) of Section 46 of the Customs Act, 1962, inasmuch as they had willfully mis-declared description and quantity of the imported goods in the Declaration of Bill of Entry filed under the provisions of Section 46(4) of Customs Act, 1962.

22. I further find that in the instant case, the Importer had failed to comply with the requirement of law and had wilfully mis-declared 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) that these goods were found concealed by the goods declared in the Bill of Entry. Therefore, I find that, the Importer failed in presenting Bills of Entry in terms of its accuracy and completeness of the information given therein in contravention of Section 46 of the Customs Act, 1962 and this resulted into the violation of Section 46 of the Customs Act, 1962.

23. I further observe that, the Importer in his defense reply has submitted that they were not at all aware that their foreign supplier, M/s. Orchid Plus Co. Ltd., Bangkok by mistake has loaded some quantity of mis-declared cargo i.e. 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) apart from goods specified in Invoice and the Importer has produced email communication dated 6<sup>th</sup> November, 2024 made by them with their foreign supplier, M/s. Orchid Plus Co. Ltd., Bangkok in this regard. In support of their claim, the Importer has referred to the case laws viz. (i) ITC Ltd. Vs Commr of Customs, New Delhi (Import & General) – 2017(349)ELT154(Tri.Del); (ii) ITC Ltd. Vs Commr of Customs, New Delhi – 2016(343)ELT156(Del.); (iii) Commr of Customs (Import), JNCH, Nhava Sheva Vs Amrit Corp. Ltd – 2016(333) E.L.T. 340(Tri. Mum); and (iv) Laxmi Marine Vs Commr of Customs, Kandla – 2010(260) E.L.T.113 (Tri. Ahmd.).

24. Ongoing through the case laws submitted by the Importer, I find that the same are distinguishable to the facts of case on hand, as the details of the case discussed therein are not similar to the grounds of the instant case as narrated below:

(i) ITC Ltd. Vs Commr. of Customs, New Delhi (Import & General) – 2017(349) E.L.T. 154 (Tri.Del): – In said case, there was mistake on the part of foreign supplier while issuing invoice w.r.t. declaration of value of goods supplied as free replacement of defected parts. However, in the instant case the Importer has willfully undeclared certain imported goods using declared goods for its concealment to evade customs duty.

(ii) ITC Ltd. Vs Commr of Customs, New Delhi – 2016(343) E.L.T. 156(Del.): In the said case, the Importer has accepted the payment of redemption fine and penalty imposed under Section 125 of the Customs Act, 1962 & Section 112(a) (ii) of the Customs Act, 1962 respectively and had requested the Hon'ble Court to avoid further proceedings on the part of Customs to withdraw benefits available to them under Circular No.58/2004-Cus dated 21.10.2004. The circumstances of the said case are in contradictory to the Importer's stand.

(iii) Commr of Customs (Import), JNCH, Nhava Sheva Vs Amrit Corp. Ltd – 2016(333) E.L.T. 340(Tri. Mum): In the said case, the Importer had resorted to First Check as they were uncertain with respect to entitlement of their claim for concessional rate of duty. While, I find that



case, the Importer had never opted for First Check and that in case of the imported goods were not checked and examined by Customs, the wrong declaration of quantity of goods would have gone undetected. Hence, I find that, there has been willfully misdeclaration with intention to evade customs duty.

(iv) Laxmi Marine Vs Commr of Customs, Kandla – 2010(260)E.L.T.113(Tri. Ahmd.): In the said case, the Importer had requested for amending the IGM in as much as their suppliers have intimated that there had been a mistake in stuffing the container immediately. However, I find that, in instant case, the Importer had never approached the Customs for amendment of IGM or approached their Foreign Supplier for amendment of Bill of Lading or any other such efforts have ever been made on the part of Importer immediately on import of goods, which may justify the Adjudicating Authority that there was bonafide mistake on the part of the Importer.

24.1 Accordingly, I find that the cases laws relied upon by the Importer are not in consonance to the facts of the instant case, as discussed above and at the same time case laws relied upon by the Importer as mentioned at Sl. No. (iii) & (iv) of Para 24 above are actually strengthening the stake of the Department, as the Importer has never approached the Customs for amendment of IGM or approached their Foreign Supplier for amendment of Bill of Lading, COO, etc. I further find that, the statement of the Importer that they were not at all aware that their foreign supplier, M/s. Orchid Plus Co. Ltd., Bangkok by mistake has loaded some quantity of mis-declared cargo i.e. 150 Cartons Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) apart from goods specified in Invoice, is after thought as the goods were seized vide Panchnama dated 09.09.2024 while they have taken up matter with their foreign supplier, M/s. Orchid Plus Co. Ltd., Bangkok regarding only after two months of incident. Further, I find that the Importer has neither produced any Email communication earlier to the date of import with respect order placed by them with their foreign supplier, M/s. Orchid Plus Co. Ltd., Bangkok nor any other supporting documentary evidence proving their claim regarding bonafide mistake. It is therefore, I find that, such submission on the part of Importer on the basis of surmises and conjectures is not admissible.

25. I further find that, since the description and quantity of the imported goods found during the course of examination of imported goods were not as per declaration in the import documents i.e. Bill of Entry, Bill of Lading, Invoice, etc. The Importer had willfully mis-declared the quantity and description of imported goods during the course of self-assessment of the said Bill of Entry as envisaged under Section 17(1) of the Customs Act, 1962 and that on examination of imported goods by the Officers of Custom House - Pipavav the fact w.r.t. the mis-declaration of description and quantity of the subject goods came on record and thereby the said Importer contravened the provisions of Customs Act, 1962 as discussed above and therefore, the undeclared goods viz. 200 Cartons comprising of 150 Cartons of Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10) seized vide Panchnama dated 09.09.2024 issued under Section 110 of the Customs Act, 1962 are liable to confiscation under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962.

26. I observe that, Section 2(39) of the Customs Act, 1962 defines 'smuggling', "*in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113.*" It is therefore, I find that, the goods mis-declared in the quantity (i.e. undeclared goods viz. 200 Cartons comprising of 150 Cartons of Glutinous Rice Floor and 50 Cartons of Special Soft Flour) with the intention to evade customs duty falls in the category of "smuggled goods" as per Section 2(39) *ibid.*

27. I further observe that, Section 119 of the Customs Act, 1962 regarding Confiscation of goods used for concealing smuggled goods stipulates, "*Any goods used for concealing smuggled goods shall also be liable to confiscation.*" It is therefore, I find that, the remaining goods which were declared at the time of filing of Bill of Entry No. 5168230 dated 21.08.2024 and were used to conceal the smuggled goods are also liable to confiscation under Section 111 of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962 alongwith the mis-declared goods.

28. I further find that, in order to ascertain the value of mis-declared goods, the Importer was requested to produce the Tax Invoice, if any, available w.r.t. earlier import of Cartons Glutinous Rice Floor and Cartons of Special Soft Flour, who in turn had submitted copy of Tax Invoice No.23-24/FQ02764 dated



05.06.2023 and No.24-25/F005793 dated 13.07.2024 both issued by M/s. Faridi Impex Pvt. Ltd., Mumbai showing purchase of various goods including Glutinous Rice Flour (CTH – 11029022) and Hongkong Flour (also known Special Soft Flour CTH – 19049000) from local market. Therefore, the total assessable value of the goods is taken as Rs. 20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) on the basis of Assessable Value w.r.t. Red Lotus Flour, Chilli Sauce, Aromat Seasoning Power Jar, Glass Noodle (Export PKT), Pickled Ginger and Tempura Flour as declared by the Importer in the said Bill of Entry and on the basis of copy of Tax Invoice No.23-24/F002764 dated 05.06.2023 w.r.t. quantity of Hong Kong Flour (also known Special Soft Flour CTH – 19049000) and on the basis of Invoice No.24-25/F005793 dated 13.07.2024 w.r.t. quantity of Glutinous Rice Flour (CTH – 11029022), as produced by the Importer to determine assessable value in respect of mis-declared goods.

**29.** I find that in view of the discussions supra, the entire consignment having total value of Rs.20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) of imported goods i.e. goods declared in Bill of Entry No. 5168230 dated 21.08.2024 viz. Red Lotus Flour, Chilli Sauce, Aromat Seasoning Power Jar, Glass Noodle (Export PKT), Pickled Ginger and Tempura Flour (mentioned at Sl. No. 1 to 6 of the Table-B above) and undeclared goods viz. Cartons [150 Cartons of Glutinous Rice Floor (1Kg X 10) and 50 Cartons of Special Soft Flour (1Kg X 10)] concealed by declared goods (mentioned at Sl. No. 7 & 8 of the Table-B above), placed under seizure in terms of Section 110 of the Customs Act, 1962 vide Panchnama dated 09.09.2024 are liable to be confiscated under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962.

**30.** I further find that, the Importer had claimed the benefit of Notification No. 46/2011-Cus dated 01.06.2011, by producing the Country of Origin Certificate No. AI2024-0046556 in respect of the imported goods as envisaged under ASEAN-INDIAN FREE TRADE PREFERENTIAL TARIFF AGREEMENT for import of goods from Thailand. However, description, details and quantity of goods as per Country of Origin (COO) did not match with the actual details of goods and Importer have never approached their Foreign Supplier for the amendment of Country of Origin, Bill of Lading any consonance to the actual quantity of the imported goods found during the examination and has also not produced in documentary evidence in this regard. In the peculiar situation, when the COO Certificate is only w.r.t. partial quantity of imported goods, I deemed the same to inadmissible and not acceptable for the grant of exemption benefit. Hence, benefit of the exemption Notification No. 46/2011-Cus dated 01.06.2011 cannot be made available to the Importer and liable to be denied to the Importer in respect of entire goods, as the entire goods which were seized Panchnama dated 09.09.2024 under Section 110 of the Customs Act, 1962 and are liable to be confiscated under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962 as discussed herein above.

**31.** In view of above, I find that, the Importer is liable to pay total Customs duty amounting to Rs.9,25,110/- (Rupees nine lakh, twenty five thousand, one hundred and ten only) [i.e. Rs.7,69,477/- + Rs.1,55,633/-] under Section 28(4) of the Customs Act, 1962 as per duty calculation sheet attached as Annexure –A with the Show Cause Notice No. ADC-05/2024-25 dated 12.11.2024 as well as for payment of interest as applicable in terms of Section 28AA of the Customs Act, 1962.

**32.** I further observe that, Section 125 (1) of the Customs Act, 1962 regarding Option to pay fine in lieu of confiscation stipulates, "*Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this 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 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.*"

**32.1** It is therefore, I find that, the Importer may be provided with an option to pay fine in lieu of confiscated goods for its redemption. I further find the representative sample of all imported goods were drawn and sent to the Assistant Chemical Examiner, C.Ex. & Customs Laboratory, Vadodara for Chemical Test who vide Test Report dated 09.10.2024 confirmed the goods are "*fit for human consumption in respect to biological analyzed parameters*" & therefore, an option to pay fine in lieu of confiscated goods for its redemption should be accorded to the Importer.



33. Now, I proceed to consider the proposal of penalty under Section 114A of the Customs Act, 1962 against the Importer. I find that demand of customs duty total amounting to Rs. 9,25,110/- (Rupees nine lakh, twenty five thousand, one hundred and ten only) has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of duty not levied or short levied by reason of collusion of wilful mis-statement or suppression of facts. Hence, as a natural corollary penalty is imposable on the Importer/Importer under Section 114A of the Customs Act, 1962, which provides for penalty equal to duty plus interest in cases where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts. In the instant case, the ingredient of wilful mis-statement or suppression of facts by the Importer has been clearly established as discussed in the foregoing paras and hence, I find that, this is the fit case for imposition of quantum of penalty equal to the amount of duty and interest in terms of Section 114A *ibid*.

34. Further, penalty has also been proposed on the Importer under Section 112 of the Customs Act, 1962. In this regard, I find that, fifth proviso of Section 114A stipulates that, "*where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*" Hence, I refrain from imposing penalty on the Importer/Importer under Section 112 of the Customs Act, 1962.

35. In view of the foregoing discussions and findings, I pass the following order:

#### ORDER

- (i) I order to confiscate of the entire goods under Section 111(f), 111(i), 111(l) & Section 111 (m) of the Customs Act, 1962 read with Section 119 of the Customs Act, 1962, having total value of Rs. 20,46,569/- (Rupees twenty lakh, forty six thousand, five hundred and sixty nine only) which were seized vide Panchnama dated 09.09.2024. However, I give an option to the Importer to redeem the said confiscated goods on payment of redemption fine of Rs. 2,00,000/- (Rupees two lakh only) under Section 125 of the Customs Act, 1962 within one hundred and twenty days from the receipt to this order or else this option shall become void in terms of sub-section (3) of the Section 125 of the Customs Act, 1962, unless an appeal against such order is pending.
- (ii) I order to pay the total customs duty of Rs. 9,25,110/- (Rupees nine lakh, twenty five thousand, one hundred and ten only) under Section 28(4) of the Customs Act, 1962, along with appropriate Interest at the applicable rate, under Section 28AA of the Customs Act, 1962.
- (iii) I impose a penalty of Rs. 9,25,110/- (Rupees nine lakh, twenty five thousand, one hundred and ten only) under Section 114A of the Customs Act, 1962 on the Importer/Importer. However, I give an option, under proviso to Section 114A, to the Importer, to pay 25% of the amount of total penalty imposed under Section 114A, subject to payment of total amount of duty and interest confirmed at (iii) above, and the amount of 25% of penalty imposed under Section 114A within 30 days of receipt of this order.
- (iv) I refrain from imposition of penalty under Section 112 of the Customs Act, 1962 in terms of fifth proviso of Section 114A of the Customs Act, 1962.

  
(Amit Kumar Singh)  
Additional Commissioner

Date: 27.11.2024



F.No. Cus/5851/2024-Adjn.

To

 M/s. Regenta M Foods,  
Plot No. 2A & 2B, Survey No. 287,  
Panchratna Industrial Estate,  
Ahmedabad – 382 210

**Copy to:**

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