

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP &amp; SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425</b>	 सत्यमेव जयते
<b>A</b>	<b>File No.</b>	<b>CUS/APR/MISC/8066/2024-Gr 1-O/o Pr Commr-Cus-Mundra</b>
<b>B</b>	<b>OIO No.</b>	<b>MCH/ADC/AKM/183/2024-25</b>
<b>C</b>	<b>Passed by</b>	<b>Amit Kumar Mishra Additional Commissioner, Import Assessment, Custom House Mundra.</b>
<b>D</b>	<b>Date of order</b>	<b>30.10.2024</b>
<b>E</b>	<b>Date of Issue</b>	<b>30.10.2024</b>
<b>F</b>	<b>SCN No. &amp; Date</b>	<b>Importer has requested for waiver of SCN and PH</b>
<b>G</b>	<b>Noticee / Party / Importer</b>	<b>M/s D D International Private Limited, Vpo Kutail, Tehsil Gharaunda, Distt. Karnal, Kutail, Karnal Haryana-132037</b>
<b>H</b>	<b>DIN</b>	<b>20241071MO000000BA40</b>

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.  
 The Commissioner of Customs (Appeal), MUNDRA,  
 Office at 7<sup>th</sup> floor, Mridul Tower, Behind Times of India,  
 Ashram Road Ahmedabad-380009
3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.

7. 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 or Penalty are in dispute, where penalty alone is in dispute.

**Brief facts of the case**

M/s D D International Private Limited Vpo Kutail, Tehsil Gharaunda, Distt. Karnal, Kutail, Karnal Haryana-132037 (herein after referred to as “*the said importer*”) filed Bill of Entry No. 4699984 dated 25.07.2024 through their CHA M/s. Vetri Impex. for re-import of “Basmati Rice” (CTH 10063020).

The details declared in the Bill of entry are as under:

(Amount in Rs.)

Bill of Entry No. & Date	Description of goods	Qty. in Kgs	Ass. Value declared	IGST Payable declared
4699984 dated 25.07.2024	Basmati Rice (CTH 10063020)	22,350	20,69,213/-	1,09,736/-

2.1 The Examination of goods was carried out by docks examination officers at the All Cargo CFS, Mundra on 06.08.2024 in the presence of Sh. S. Kartik, Authorised Representative of CHA and authorized representative of All Cargo CFS, Mundra. The goods/cargo of the said bill of entry was stuffed in 1\*40 feet Containers bearing Seal No.(s) as under:-

Sr. No.	Container No.	Seal No.
1	CAIU4975845	7004940

2.2. As per examination report, I note following:-

- The total weight of the cargo was found to be 24,280 Kgs instead of the declared weight of the cargo i.e. 22,350 Kgs. It is also mentioned in the examination report that the said import cargo is palletised; there are 20 pallets and wt. of one pallet is 15.45 KGs, thus, total weight of pallets is 309KGs. Thus, the actual weight difference is 621 KGs for which duty is required to be demanded.
- The Goods weighing 5,922 Kgs belonging to shipping bill no. 5978175 dated 12.12.2023 has been found.
- Goods in different packaging not belonging to shipping bill no. 5978175 dated 12.12.2023 have been found with total weight of 17,385 Kgs having brand name as Diba. It is mentioned in the examination report that the said goods were earlier exported vide shipping bill no. 3110906 dated 10.08.2023 and

is thus re-import cargo against different shipping bill.

3.1. In view of above, it is evident that the said importer has mis-declared their goods as 17,385 Kgs of Basmati Rice under BoE No. 4699984 dated 25.07.2024. They have filed BoE No. 4699984 dated 25.07.2024 for re-import of "Basmati Rice" exported vide Shipping Bill no. 5978175 dated 12.12.2023. The 17,385 KGs goods exported earlier vide shipping bill no. 3110906 dated 10.08.2023 found during examination are not declared in the said re-import BoE. Therefore, 17,385 KGs of said undeclared goods imported under above Bill of Entry No. 4699984 dated 25.07.2024 are liable for confiscation under Section 111(i), 111(l) and (m) of the Customs Act, 1962.

3.2. Furthermore, I note that the excess goods than the declared weight found during. It is mentioned in the examination report that the weight difference is 621 KGs for which duty is required to be demanded. However, I note that the weight difference between declared weight 22,350 KGs and weight found during examination 24280 KGs, therefore the gross weight difference is 1930 KGs. After reducing the weight of pallets of 309 KGs as per examination report, the actual weight difference is 1621 KGs for which duty is required to be demanded from the said importer under provisions of Section 17 of the Customs Act, 1962 by way of re-assessment of said BoE. The said 1621 KGs of the goods are also not declared by the importer and therefore are liable for confiscation under Section 111(i), 111(l) and (m) of the Customs Act, 1962.

3.3. In view of the above, the said importer is liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962.

#### **4 Relevant Legal Provisions of Custom Act, 1962:**

4.1 Section 2(25) defined the terms "Import Goods":

*"Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.*

4.2. Section 2(39) defined the term smuggling:-

*"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

4.3. Section 46. Entry of goods on importation:

*(4) The importer while presenting a bill of entry shall 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, relating to the imported goods.*

*[(4A) the importer who presents a bill of entry 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.]*

4.4 Section 111. Confiscation of improperly imported goods, etc. – *The following goods brought from a place outside India shall be liable to confiscation:-*

*(a) --*

*--*

*--*

*--*

*(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;*

*.....*

*.....*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

4.5 Section 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 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:*

**Provided** that where such duty as determined under subsection (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 goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 in either case hereafter in this section referred to as the declared value is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*
- iv. *in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- v. *in the case of goods falling both under clauses (ii) and (iii), to a penalty not*

exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

4.6. Provisions of Section 17 of the Customs Act, 1962 provides that provisions of duty not paid for reasons of collusion, wilful mis-statement and suppression of facts:-

**“Section 17 Assessment of duty. -**

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the<sup>2</sup> [the entries made under section 46 or section 50 and the self assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

<sup>3</sup> [Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

<sup>4</sup> [(3) For<sup>5</sup> [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter<sup>6</sup> [\*\*\*] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

<sup>7</sup> [\*\*\*]

**Explanation.** - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received.]"

### **SHOW CAUSE NOTICE & PERSONAL HEARING**

5. The importer vide letter dated NIL received on 17.09.2024 already submitted their consent to decide the matter on merit as per the examination report and gave their consent to re-assess the said bill of entry and further requested that they do not want any PH/SCN in the matter.

### **DISCUSSION AND FINDINGS**

6. The importer vide letter dated NIL already submitted their consent to decide the matter on merit as per the examination report and gave their consent to re-assess the said bill of entry. Therefore, the principle 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 documentary evidences available on records. The points to be decided in the instant case are as to:

- i. Whether goods are liable for confiscation in terms of sub-section (i), (l) and (m) of Section 111 of the Customs Act, 1962 or otherwise.
- ii. Whether importer is liable for penalty under section 112(a) of the Customs Act, 1962 or otherwise.
- iii. Whether duty is required to be demanded for imported goods found in excess of weight 1621KGs under provisions of Customs Act, 1962

7.1. I have carefully gone through the records of the case; I find that during examination, total weight of the cargo was found to be 24,280 Kgs instead of the declared weight of the cargo i.e. 22,350 Kgs. It is also mentioned in the examination report that the said import cargo is palletised; there are 20 pallets and wt. of one pallet is 15.45 KGs, thus, total weight of pallets is 309KGs. It is mentioned in the examination report that the weight difference is 621 KGs for which duty is required to be demanded. However, I note that the weight difference between declared weight 22,350 KGs and weight found during examination 24280 KGs, thus actual weight difference is 1930 KGs. After

reducing the weight of pallets of 309 KGs, the actual weight difference is 1621 KGs for which duty is required to be demanded from the said importer under provisions of Section 17 of the Customs Act, 1962 by way of re-assessment of said BoE. I also note from the examination report that the declared re-imported goods weighing 5,922 Kgs belonging to shipping bill no. 5978175 dated 12.12.2023 have been found. Further, goods in different packaging not belonging to shipping bill no. 5978175 dated 12.12.2023 have been found with total weight of 17,385 Kgs having brand name as Diba. It is mentioned in the examination report that the said goods were earlier exported vide shipping bill no. 3110906 dated 10.08.2023 and is thus re-import cargo against different shipping bill.

7.2. The goods Basmati Rice (CTH 10063020) weighing 1621 KGs are found in excess than the declared weight which attract BCD @70%, SWS@0% and IGST @0%. The assessable value of 22,350 KGs of basmati rice declared as Rs. 20,69,213/-, accordingly, the assessable value of 1621 KGs found in excess. The said importer has mis-declared the weight of the said imported cargo, therefore, the amount of duty not paid for 1621 KGs of said importer goods is required to be demanded under provisions of Section 17 of the Customs Act, 1962 by way of re-assessment of said BoE. The assessable value for 22,350 KGs of said imported goods is Rs. 20,69,213/-, accordingly on pro-rata basis excluding weight of pallets of 309 KGs, the assessable value of 1621 KGs of goods found in excess is Rs. 1,50,076/- . Accordingly, the duty required to be demanded is as under:

Table-1  
Details of the Mis-declared Cargo

Description of Goods	Duty Payable under CTH 10063020	Quantity (in KGS)	Ass. Value of 1621 KGs determined on pro-rata basis	BCD required to be demanded @70%
Basmati Rice	BCD @70%, SWS @0% IGST@5%	1621	1,50,076/-	1,05,053/-

I find that the importer is liable to pay the BCD duty of Rs. 1,05,053/- on the goods found in excess weighing 1621 KGs as discussed in above table i.r.o Bill of Entry no. 4699984 dated 25.07.2024.

7.3. I find from the case records, the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, ibid, casts an obligation on the importer to ensure accuracy of the

declaration and authenticity of the documents supporting such declaration. In the instant case, the Importer had failed to discharge the statutory obligation cast upon him due to failure in furnishing the correct details. Thus, I find that the importer has contravened the provisions of Section 46(4) & Section 111 (i), 111(m) and 111(l) of the Customs Act, 1962 as M/s D. D. International Pvt. Ltd., has not declared the goods weighing 17,385 KGs belonging to shipping bill no. 3110906 dated 10.08.2023. Further, the total weight of the cargo is also not declared correctly; 1621 KGs goods found in excess than the declared weight for which duty is required to be demanded along with interest. However, I note from the examination report that said 17,385 KGs of re-imported goods are belonging to shipping bill 3110906 dated 10.08.2023. Thus, all the said goods are of Indian Origin. In addition to the declared weight, 1621 KGs of goods found in excess for which duty is required to be demanded as per provisions of Section 17 of the Customs Act, 1962.

7.4. As per Section 111(i), 111(l) and 111(m) of the Customs Act, 1962, all the goods i.e. mis-declared goods of 17,385 KGs and the said 1621 KGs found in excess and concealed and any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 (in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section (54) shall be liable to confiscation. Therefore, all the un-declared goods i.e. the 17,385 KGs of goods belonging to shipping bill no. 3110906 dated 10.08.2023 and excess goods of 1621 KGs are liable for confiscation under sub- section (i), (l) and (m) of Section 111 of the Customs Act, 1962.

7.5. I find that the self-assessment done by the importer under section 17(1) of the Customs Act, 1962 is incorrect. Thus, non-compliance of provisions of Section 17 of the Customs Act, 1962, the imported goods as mis-declared, are rendered the same liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, the said impugned goods, having value amounting to Rs. 22,19,289/- (Rs. 20,69,213 for declared weight of 22,350 KGs + Rs. 1,50,076/- for un-declared/excess goods weighing .1621 KGs excluding the weight of pallets) are liable for confiscation under sub- section (i), (l) and (m) of Section 111 of the Customs Act, 1962.

7.6. Section 125 of the Customs Act, 1962 provides that whenever confiscation of any good is authorized by the Customs Act, 1962, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to

pay in lieu of confiscation such fine as the said officer thinks fit. I find that the said provision makes it mandatory to grant an option to owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. In the instant case, considering the facts, I find it appropriate to grant an option to pay fine in lieu of confiscation of the subject goods. I also find that the total value of the imported goods declared by the importer is Rs. 20,69,213/- and the value of excess goods is Rs. 1,50,076/-, accordingly, total value of the goods is Rs. 22,19,289/- duty @70% is applicable for the imported goods.

7.7 I find that the importer M/s D. D. International Pvt. Ltd. for said act of mis-declaration of the goods have made the goods liable for confiscation under Section 111(m) and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962 which I confirm on them.

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

### **ORDER**

- i. I order to reject the declared assessable value of Rs. 20,69,213/- and order to re-determine the value to Rs. 22,19,289/- (Rupees Only) for the goods imported vide Bill of Entry No. 4699984 dated 25.07.2024 and order to re-assess the Bill of Entry accordingly.
- ii. I order to confiscate the goods viz. 17,385 KGS (Basmati Rice) valued at Rs. 16,09,542/- pertains to shipping bill no. 3110906 dated 10.08.2023, imported/remained undeclared against Bill of Entry No. 4699984 dated 25.07.2024 under Section 111(i), 111(l) and 111(m) of the Customs Act, 1962.
- iii. I order to confiscate the goods viz. 1,621 KGS (Basmati Rice) valued at Rs. 1,50,076/- found in excess of the declared weight of cargo under Section 111(i), 111(l) and 111(m) of the Customs Act, 1962.
- iv. As I have ordered for confiscation of the goods as mentioned in para (ii) and (iii), since goods not being prohibited/restricted, I give the importer to redeem the said goods on payment of redemption fine of Rs 1,75,000 /- (Rs. One Lakh Seventy Five Thousand Only) under Section 125 of the Customs Act, 1962.
- v. I order to demand and confirm applicable duty of **Rs. 1,05,053/- (Rs. One Lakh Five Thousand Fifty Three Only)** not paid for 1621 KGs goods under provisions of Section 17 of the Customs Act, 1962 by way of re-assessment.
- vi. I impose a penalty of Rs. 10,000/- (Rupees Ten thousands only) on the

importer M/s D. D. International Pvt. Ltd (IEC-1299000321) under Section 112 (a)(ii) of the Custom Act, 1962.

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

**(AMIT KUMAR MISHRA)**

ADDITIONAL COMMISSIONER

Custom House, Mundra

F.No. I/2394565/2024

Date: 30-10-2024

To,  
M/s. D D International Private Limited  
Vpo Kutail, Tehsil Gharaunda,  
Distt. Karnal, Kutail,  
Karnal Haryana-132037

Copy to:

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