



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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A	File No.	CUS/APR/BE/SAO/34/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/82/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	04.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s Supple Tek Industries Pvt. Ltd. (IEC No. 1213002877) Village Chabba Tarn Taran Road, Amritsar, Punjab – 143022
F	DIN No.	20240771MO000000E54F

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),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, 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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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 मांग 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. Supple Tek Industries Private Limited (IEC No. 1213002877) having their address at Village Chabba Tarn Taran Road, Amritsar (*hereinafter referred to as the importer for the sake of brevity*) filed Bill of Entry No. 2470407 dated 07.03.2024 for clearance of 79783 Kgs of "Super Basmati Rice/1121 Premium Basmati Rice" having assessable value of Rs. 89,53,618/-. The said goods are re-imported under Bill of lading No. 6370272420 dated 08.12.2023 and Commercial Invoice No. RE-EXPORT P-099/23-24 dated 14.08.2023, RE-EXPORT P-100/2023-24 dated 14.08.2023, RE-EXPORT P-101/2023-24 dated 14.08.2023 & RE-EXPORT P-103/2023-24 dated 14.08.2023. The said re-imported goods were exported vide Shipping Bill Nos. 3292954 dated 18.08.2023, 3292956 dated 18.08.2023, 3613467 dated 31.08.2023 & 3613476 dated 31.08.2023. The details of Re-imported goods are as under:

Table- A

Item No. (as per BE)	Description as per Bill of Entry & Commercial Invoice	Declared CTH	Weight (In MTS)	Assessable Value (in Rs.)
1	(RE-IMPORT) SUPER BASMATI RICE 1074 BAGS PKD IN 2X9.08KG	10063020	19.50	2130365.4/-
2	(RE-IMPORT) SUPER BASMATI RICE 1074 BAGS PKD IN 2X9.08 KG	10063020	19.50	2130365.4/-
3	(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG	10063020	19.01	2373874.96/-
4	(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1074 BAGS PKD IN 1X18.160 KG	10063020	19.50	2319012.36/-
5	Total		77.51	8953618.12/-

2. On re-import of the said cargo, FSSAI officials have drawn representative samples of the above goods, wherein, on the basis of testing, goods at Sr. No. 01, 02 & 04 have been issued FSSAI NOC, whereas, in respect of goods at Sr. No. 03 representative samples drawn vide sample ID no. RT202403000052852 by the Food

Safety and Standards Authority of India (FSSAI) officer, Mundra for the goods declared as “(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG” weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96/- as detailed in Table-A above. The sample has been rejected for NOC for home consumption by the FSSAI authorities stating that *“The sample does not conform to provisions of FSS Act, Rules and Regulations made there under. Rejection Reason- Safety Parameters.”*

3 . From the above, it appears that the goods declared as “(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG” weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96/- covered under item no. 03 of the said Bill of Entry were rejected for home consumption by the FSSAI authorities. FSSAI did not find the goods fit for home consumption. Prima facie, it is seen that said cargo is mainly for the human consumption and such conditions are not fulfilled during FSSAI test, hence, the re-imported goods may not be cleared from Mundra Port and the same is required to be re-exported. The failure of the sample resulted into non-compliance of the provisions of Food Safety & Standards Act, 2006. Therefore, such goods would be treated as prohibited for import and action on such goods is to be taken under the Customs Act, 1962.

4. The importer vide letter dated 27.06.2024 has requested to allow them to re-export the goods covered under item no. 03 of the said Bill of Entry and as detailed in Table-A above.

5 . It appears that the goods declared as “(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG” weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96/- appears to be liable for confiscation under Section 111 (d) of the Customs Act, 1962 and the importer is also liable for penal action under Section 112 (a)(i) of the Customs Act, 1962.

6 . The importer vide their letter dated 27.06.2024 has requested to re-export the subject goods (item at Sr. No. 3 of BE). They also submitted that that they don't require Show Cause Notice and personal hearing in this case.

7. LEGAL PROVISIONS APPLICABLE IN THE CASE:

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) OF THE CUSTOMS ACT, 1962:

111. Confiscation of improperly imported goods etc.

The following goods brought from the place outside India shall be liable to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water 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.

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, 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;*

SHOW CAUSE NOTICE & PERSONAL HEARING

8. The importer vide letter dated 27.06.2024 submitted that they don't require Show Cause Notice and personal hearing in the matter. Further, they have requested for permission to re-export the "(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG" weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96/-.

DISCUSSION AND FINDINGS

9. I have carefully gone through the case records. The importer vide letter dated 27.06.2024 have requested for waiver of the show cause notice and personal hearing in the matter. Thus, I find that principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records. The points to be decided in the instant case are:

- I. Whether the re-imported goods i.e. "(RE-IMPORT) 1121 PREMIUM

BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG" weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96/- as detailed in Table-A above, which was rejected by FSSAI authorities are liable for confiscation under Section 111(d) of the Customs Act, 1962.

II. Whether the importer is liable for penal action under 112(a) of Customs Act, 1962.

9.1 I find that on re-import of the goods, the samples under sample ID no. RT20240300067493 were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra. The goods declared as "(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG" weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96 and covered under item no. 03 of the said Bill of Entry and as detailed in Table-A above, was rejected for NOC for home consumption by the FSSAI authorities stating that *"The sample does not conform to provisions of FSS Act, Rules and Regulations made there under. Rejection Reason- Safety Parameters."*

9.2 I find that the importer vide letter dated 27.06.2024 has requested to allow them to re-export the goods viz. 19.01 MTS of "(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG".

9.3 From the above, I find that the FSSAI did not find the goods i.e. "(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG" having Assessable Value of Rs. 23,73,874.96/- weighing 19.01 MTS fit for home consumption. Prima face, it is seen that said cargo is mainly for the human consumption and such conditions is not fulfilled during FSSAI test. Hence, the re-imported goods may not be cleared from Mundra Port and same is required to be re-exported. The failure of sample resulted into non-compliance of the provisions of Food Safety & Standards Act, 2006 as discussed in the foregoing paras. Therefore, such goods would be treated as prohibited for import and action on such goods and persons involved is to be taken under the Customs Act, 1962.

In view of the above, I find that the importer has violated provisions of FSS Act, 2006 and Rules made thereunder, thus the re-imported goods are prohibited as per Section 2(33) of the Customs Act, 1962 & liable for confiscation under Section 111(d) of the Customs Act, 1962. For this action, importer has rendered themselves liable for the penal action under the provisions of Section 112(a)(i) of the Customs Act, 1962.

9.4 I find that the importer has requested for permission to re-export the goods

to their new overseas buyer. 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 to be re-exported after necessary adjudication proceedings. The provision of food safety and standard act 2006 are not specifically restricting the re-export of such failed consignment. Therefore, the option of re-export can be availed by the Importer after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962. Whereas, Section 125(1) of the Customs Act, 1962 provides that:

"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging 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 redemption fine as the said officer thinks fit".

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

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

ORDER

10.1 I order for confiscation of re-imported goods declared as "(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG" weighing 19.01 MTS having Assessable Value of Rs. 23,73,874.96 imported vide Bill of Entry No. 2470407 dated 07.03.2024 under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to re-export the confiscated goods on payment of redemption fine of Rs. 2,00,000/- (Rs. Two Lakh Only) under Section 125 of the Customs Act, 1962.

10.2 I impose a penalty of Rs. 50,000/- (Rs. Fifty Thousand Only) on the importer M/s Supple Tek Industries Private Limited (IEC No. 1213002877) having their address at Village Chabba Tarn Taran Road, Amritsar under Section 112 (a)(i) of the Custom Act, 1962.

10.3 I also allow the importer to re-export the goods declared as “(RE-IMPORT) 1121 PREMIUM BASMATI RICE 1047 BAGS PKD IN 4X4.540 KG” weighing 19.01 MTS having Assessable Value of Rs.23,73,874.96 covered under item no. 03 of the said Bill of Entry.

11. 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.

Signed by

Arun Kumar

Arun Kumar

Date: 04-07-2024 17:13:04
ADDITIONAL COMMISSIONER
Import Section, CH Mundra

Date: 04-07-2024

To,

M/s Supple Tek Industries Private Limited

(IEC No. 1213002877)

Village Chabba Tarn Taran Road, Amritsar

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. The Manager, Concerned CFS, MP & SEZ, Mundra
5. Guard File.