

<input type="checkbox"/>	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: Investigation Report issued vide F. No. S/20-24/SIIB/Aadinath/CHM/21-22 dated 21.03.2023
B. Order-in- Original No.	: MCH/ADC/MK/2022-23 MCH/ADC/MK/133/2023-24
C. Passed by	: Ms Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	: 01.08.2023/01.08.2023
E. Show Cause Notice No. & Date	: Investigation Report issued vide F. No. S/20-24/SIIB/Aadinath/CHM/21-22 dated 21.03.2023
F. Noticee(s)/Party/ Importer	: M/s. Pieta Tradelink, Shop No. 4, Second floor, Suvarn BH, Opposite Speedwell party Plot, Rajkot-360005

DIN: 20230871MO0000059317

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),

7 वीं 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 be 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 चाहिये ।

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.

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ISSUE IN BRIEF:

M/s. Pieta Tradelink, Shop No. 4, Second floor, Suvarn BH, Opposite Speedwell party Plot, Rajkot-360005 holding IEC NO: BDLPJ7833F (hereinafter referred to as 'the Importer'), had filed One Bill of Entry No. 8063970 dated 29.03.2022 through customs broker M/s Ashapura Shipping Agency at Mundra port. The goods mentioned in the Bill of Entry and assessable value of the goods declared by the importer is reproduced here for reference: -

Table-A

Sr No.	Bill of Entry Number/Date	Description of goods & Quantity	Assessable value(INR)
1.	8063970/29.03.2022	Black Matpe (Urad Dal whole) & 16 MTs	Rs 9,22,800/-

2. Specific Information was received that importer M/s Pieta Tradelink had filed bill of entry no. 8063970 dated 29.03.2022 and which may contain some concealed or un-declared items to evade customs duty and/or to circumvent the policy restrictions/prohibitions.

3. Acting upon the above information the said import consignments had been put on hold for the examination. The examination of the said import consignments was carried out by the SIIB officers, Custom House, Mundra in presence of Shri Sunil Kumar Thakur, Assistant Manager of speedy multimode limited. The seal number mentioned on the container did not match with the seal affixed on the container, on being asked the CFS representative, he replied that the said container was opened for

FSSAI and PPQ sampling. The goods were then examined under panchnama dated 08.04.2022 and it was found that there were total 109 bags of black Matpe (50 kg each) and 304 bags of black pepper (40 kg each). The details of the goods found during examination are as below:

Table-B

Sr No.	Item	Quantity found during examination(in bags)	Weight of each bag(in kgs)	Total weight (approx.)
1.	Black Matpe	109 bags	50 kg	5,450 Kg
2.	Black pepper	304 bags	40 kg	12,160 Kg
				17,610 kg

5. Importer had declared the total assessable value of Rs. 9,22,800/- for total weight of 16,000 KGs. The unit price of goods i.e. Black Matpe comes to Rs. 57.10 per KG. Importer imported the Black Matpe having total weight 5450 KGs against the total declared weight 16,160 KGs. The impugned goods i.e. Black Pepper was imported in said consignment in disguise of Black Matpe having total weight of 12,160 KGs. The un-declared goods are rightly classifiable under CTH 09041130. The un-declared goods i.e. Black Pepper are prohibited as per policy conditions. However, import of Black Pepper is free if CIF value is above 500/- per Kg. Based on analysis of contemporary/NIDB data of un-declared goods i.e. Black Pepper, unit price of the impugned goods comes to Rs. 522.69 per Kg. Accordingly, the re-determined assessable value of the both items are tabulated as under:

Table-C

Sr. No.	Item	Total weight (approx.)	Unit Price of goods (in Rs.)	Total value of impugned goods (in Rs.)
1.	Black Matpe	5,450 Kg	57.10	3,11,195/-
2.	Black Pepper	12,160 Kg	522.69	63,55,910/-
		17,610 Kg		66,67,105/-

6. During the examination, it was observed that there is mis-declaration in respect of description and quantity in the consignment as item no. 2 in above table i.e "Black Pepper" has not been mentioned by the importer while filing the said Bill of Entry. The import of black pepper ungarbled having HS code 09041140 is prohibited, however Import is free if CIF value is above Rs 500/- kg.

7. As the goods were found to be mis-declared and other item such as Black Pepper were also found during the course of

examination and hence, same appear to be liable for confiscation under section 111(d), 111(l) and 111(m) of the Customs Act, 1962. Therefore, the goods of Bill of Entry No. 8063970 dated 29.03.2022 were seized by the proper officer under the provisions of Section 110(1) of the Customs Act, 1962 vide Seizure Memos dated 08.04.2022.

8. Summons dated 10.05.2022 and 01.06.2022 were issued to the importer (IEC holder) for recording of statement under section 108 of the Customs Act, 1962. The importer Shri Pratik Bharatbhai proprietor of Pieta Tradelink, gave voluntary statement on 07.06.2022, wherein he stated that:-
 - a. His name is Shri Pratik Bharatbhai Java. He is the General Manager of firm M/s Pieta Trade links firm. There are 2 persons on permanent basis working in the firm.
 - b. They are mainly dealing in trading agro-products. They import goods such as Black matpe, base oil for trading purpose. They sell them in Rajkot market.
 - c. He has contacted Mr bharat bhai 2 years ago who then suggested him to file bill of entry through Customs Broker M/s. Ashapura shipping agency for clearance.
 - d. The order was placed by him via telephonic conversation with Mr Haroon, General Manager of M/s General Pearl trading LLC, Shipper. The payment was made through Indusind bank having account number 257600244047 on advance payment mode. They had paid 12000 USD in the present consignment.
 - e. On being asked about the mis-declaration of cargo, he replied that he get to know that some quantity of black pepper was also found, along with black matpe (Urad Dal). They had placed order of Urad Dal, and also they paid the payment of Urad Dal 12,000 USD but due to the labour mistake at shipper end some quantity of black pepper were also loaded in the container which were supposed to be loaded in another container.
 - f. Since 304 bags of black pepper were mistakenly loaded in the container and they do not want this cargo and hence they are requesting for re-export the cargo. Further they do not want any show cause notice and personal hearing in the matter.
9. Summons dated 19.12.2022, 03.01.2023 and 13.02.2023 were issued to the Customs Broker for recording of statement under section 108 of the Customs Act, 1962. The Authorise representative of CB, M/s Ashapura Shipping Agency Shri Hitesh Kesav Thakur gave voluntary statement on 20.03.2023

, wherein he stated that:-

- a. His name is Shri Hitesh Keshav Thakur and he is permanent employee of firm working as Documentation (Import) and prepare all import related documents. I am authorized to appear on behalf of our company before Customs
- b. They have filled Bill of Entry No. 8063970 dated 29.03.2022 on behalf of their client M/s Pieta Tradelink for the clearance of goods declared as Black Matpe (Urad Daal Whole) but during the examination the goods found misdeclared.
- c. They filed Bill of Entry on the basis of documents i.e Bill of lading, Invoice and Packing List, COO received from importer and only came to know about Black pepper after opening the container for examination by Customs.

10. The importer M/s Pieta Trade Link had filed one Bill of Entry No. 8063970 dated 29.03.2022 through his Customs Broker M/s Ashapura Shipping Agency for import of black matpe under CTH 07133110. An intelligence was received that there might be some concealment/mis-declaration in the cargo covered under bill of entry no. 8063970 dated 29.03.2022. The goods were then put on hold by this section and examined by the SIIB Officers in presence of Shri Sunil Kumar Thakur, Assistant manager of speedy Multimode limited under panchnama dated 08.04.2022. During the course of examination, the goods found mis-declared in respect of description, the goods found during examination 109 bags (50 kg each) of Black Matpe and 304 bags of black pepper (40 kg each), however the importer M/s Pieta Trade Link declare 320 bags of black matpe and they did not declare the item black pepper while filing the Bill of Entry no. 8063970 dated 29.03.2022. Further, the importer M/s Pieta trade link submitted that the goods (i.e Black pepper) were stuffed mistakenly in the container and they want to re-export the cargo back to the supplier.

11. Further, as the goods were liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962 therefore, the goods of the Bill of Entry No 8063970 dated 29.03.2022 were seized vide Seizure Memo dated 08.04.2022. It appears that the importer M/s Pieta Trade Link Shop, No. 4, Second Floor, Suvarn Bhoomi Apartment, Rajkot, Gujarat-360005 has violated the provisions of section 46 of the customs Act, 1962 by way of mis-declaring the goods description in the bill of entry and hence the importer M/s Pieta Trade Link is liable for penal action under section 112(a)(i) of the Customs Act, 1962.

12. In the said case, importer M/s. Pieta Trade Link has intentionally or knowingly imported the impugned goods i.e. Black Pepper in guise of Black Matpe to evade the custom duty and

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policy conditions and importer was involved in importation of illegal goods thereby rendered himself liable to penalty under Section 114AA of Customs Act, 1962.

13. Customs Broker i.e. M/s Ashapura Shipping Agency has failed to produce the correct documentation and failed to comply with provision of the Customs Act, 1962 and that rendered himself liable to penalty under Section 114AA & 117 of Customs Act, 1962.

14. The importer vide letter dated 29.07.2022 had submitted that the black pepper was stuffed mistakenly in the container. Further, they do not want any personal hearing and show cause notice. They are ready to pay the fine and penalty as per the Customs norms and rules.

15. In view of the above facts, the Investigation report was issued by Dy Commissioner of Customs, SIIB, Mundra on 21.03.2023. The investigation report suggests that:

- a. The subject goods covered under Bill of Entry No. 8063970 dated 29.03.2022 are liable for confiscation under section 111(d), 111(l) & 111(m) of the Customs Act, 1962.
- b. Penalty on the importer, M/s. Pieta Tradelinks, Shop No.4, Second Floor, Suvarn Bhoomi Apartment, Rajkot, Gujarat-360005, imposable under Section 112(a)(i) of the Customs Act, 1962.
- c. Penalty on the importer, M/s. Pieta Trade Link is imposable under Section 114AA of the Customs Act, 1962.
- d. Customs Broker i.e. M/s. Ashapura Shipping Agency is failed to comply with provisions of Customs Act, 1962. Hence, Customs Broker i.e. M/s. Ashapura Shipping Agency is also liable for penal action under Section 112(a)(i), 114AA & 117 of the Customs Act, 1962.

16. It was found that charges were also framed on Customs Broker i.e. M/s. Ashapura Shipping Agency, however, no waiver of show cause notice was given by the said CB. Therefore, a letter dated 17.07.2023 was issued to SIIB informing the said position and to separately investigate the case in respect of Customs Broker i.e. M/s. Ashapura Shipping Agency.

17. Therefore, the matter in respect of importer, M/s. Pieta Tradelink, is being decided under this order.

PERSONAL HEARING AND WRITTEN SUBMISSION

18. A personal hearing was fixed and informed to importer, M/s. Pieta Tradelink, however, importer, M/s. Pieta Tradelink, vide letter dated 26.05.2023, submitted that did not want any personal hearing in the case. They, further, requested to allow re-export of the goods.

DISCUSSION AND FINDINGS

19. I have carefully gone through the facts of the case. The case before me is to decide whether:

- (i) the goods are liable for confiscation under Section 111(d), 111(l) & 111 (m) of the Customs Act 1962 or not.
- (ii) Penalty should be imposed on M/s. Pieta Tradelink, under Section 112(a) and/or 114AA of the Customs Act, 1962 or not.

Whether the goods are liable for confiscation under Section 111(d), 111(l) & 111(m) of the Customs Act 1962 or not

20. I find that it is alleged in the investigation report that the goods are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. In this regard I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(d) and 111(m) of the Customs Act, 1962 are reproduced below: -

“(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(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;”

21. On plain reading of the above provisions of the Section 111(d) of the Customs Act, 1962 it is coherent that any goods which are imported and in violation of regulation prescribed by the law in force or any prohibition in force in respect of the said goods are imposed or non-fulfilment of any sanction imposed by the proper officer will be liable to confiscation.

22. I find that the importer has imported 12160 Kgs of “Black Pepper” by way of concealment/misdeclaration in the import consignment covered under bill of entry no. 8063970 dated 29.03.2022. “Black Pepper” is regulated under DGFT Notification 21/2015-20 dated 25th July 2018. As per said notification import of Black pepper is prohibited, however, import is free, if CIF is above value is above Rs.500/ per kg.

23. In the instant case it is clear that the importer has imported the impugned goods way of misdeclaration as "black matpe" and the CIF value of the importer goods was declared as Rs. 57.10 per Kg which is much lower than MIP Rs. 500 per Kg.

24. Therefore, I find that the goods found as "black pepper" is being imported is the CIF value below than CIF value, therefore, the "black pepper" under import is prohibited and liable for confiscation under section 111(d) of customs act, 1962.

25. Further, On plain reading of the above provisions of the Section 111(l) of the Customs Act, 1962 it is coherent that any goods which are imported in excess of the declared goods will be liable to confiscation.

26. I find that the importer has imported 12160 Kgs of "Black Pepper" by way of concealment/misdeclaration in the import consignment covered under bill of entry no. 8063970 dated 29.03.2022, therefore, the "black pepper" under import is prohibited and liable for confiscation under section 111(l) of customs act, 1962.

27. Further, On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is coherent that any goods which are imported by way of the misdeclaration, will be liable to confiscation.

28. I find that the importer has imported 12160 Kgs of "Black Pepper" by way of misdeclaration in terms of description and value, under the import consignment covered under bill of entry no. 8063970 dated 29.03.2022, therefore, the "black pepper" under import is prohibited and liable for confiscation under section 111(m) of customs act, 1962.

Liability of Penalty under Section 112(a) and/or 114AA of the Customs Act, 1962.

29. I find that the importer has contended in their submissions that the penalty is not imposable. In this regard, I find that section 112(a) stipulates the penalty for improper importation of goods on any person who in relation to 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 omissions of such an act. In the instant case it is pertinent to mention that the importer has imported the subject goods i.e., "Black pepper" vide Bills of Entry no. 8063970 dated 29.03.2022 above, in violation of the Notifications of the Central Government issued by the DGFT. For the said violation, the goods are liable to confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that for these acts and omissions, the importer is liable for penal action under Section 112(a) of the Customs Act, 1962.

30. I find that Penalty under Section 114AA is leviable in case of any "material particular" being declared false or incorrect

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knowingly or intentionally. In the instance case, investigation report failed to establish that the importer knowingly or intentionally imported the impugned goods i.e. Black Pepper in guise of "Black Matpe". Therefore, I find that the importer is not liable for penal action under Section 114AA of the Customs Act, 1962. Therefore, I refrain from imposing penalty on M/s. Pieta Tradelink under Section 114AA of the Customs Act, 1962.

ORDER

31.1 I hold the goods found as "Black Pepper" imported vide Bills of Entry no. 8063970 dated 29.03.2022 are "prohibited" under Customs Act, 1962.

31.2 I order to confiscate the impugned goods found as "Black Pepper" imported vide Bills of Entry no. 8063970 dated 29.03.2022, having assessable value of Rs. 63,55,910/- as mention in Table-C above, under Section 111(d), 111(l) & 111(m) of the Customs Act 1962. However, I give an option to redeem the same for re-export purpose only as requested on payment of redemption fine of Rs.6,00000/- (Rupees Six Lakhs Only) under Section 125(1) of Customs Act, 1962.

31.3 I impose a Penalty of Rs. 3,00000/- (Rupees Three Lakhs Only) on M/s. Pieta Tradelink, Shop No. 4, Second floor, Suvarn BH, Opposite Speedwell party Plot, Rajkot-360005 under Section 112(a) of the Customs Act, 1962.

This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

Additional Commissioner
Custom House Mundra

F.No. CUS/APR/BE/MISC/398/2023-Gr 1

Date :01.08.2023

To:

M/s. Pieta Tradelink, Shop No. 4, Second floor, Suvarn BH, Opposite Speedwell party Plot, Rajkot-360005

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Copy to:

1. The Deputy Commissioner (RRA)/EDI/TRC/SIIB/CB, Custom House Mundra
2. Guard File