

	प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX :02838-271425	
A	File No.	CUS/APR/S49/1139/2025-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/282/2024-25
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	06.02.2025
E	Noticee/Party/ Importer/ Exporter	M/s L T Foods Pvt. Ltd. (IEC 0592005801) Near Gohalwar Varpal Railway Station Tarn Taran Road, Amritsar, Punjab - 143022
F	DIN No.	20250271MO000000D0E7

1. यह अपील आदेश संबंधित 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, हुड़को 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 जाएः-

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/ व्याज/ 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.

BRIEF FACTS OF THE CASE

M/s L T Foods Limited (IEC 0592005801), having address at near Gohalwar Varpal Railway Station, Tarn Taran Road, Amritsar, Punjab - 143 022 had filed a Bill of Entry No. 3909175 dated 09.06.2024 to re-import the goods "HEER LONG BASMATI RICE" which was exported vide Shipping Bill Nos. 3572440 and 3572437 both dated 30.08.2023. The details of the goods of Bill of Entry No. 3909175 dated 09.06.2024 are:

Table-I					
Sr. No	Item Description	Quantity	LOT/BATCH	Rate in Rs (1EUR=Rs.92.45)	Value in Rs. (Freight and Insurance included)
1	HEER LONG BASMATI RICE	48 MTS	A- 290040091	109.78	59,12,698/-
2	HEER LONG BASMATI RICE	24 MTS	A- 290040097	112.97	30,42,239/-
3	HEER LONG BASMATI RICE	48 MTS	A- 290040092	109.78	56,20,817/-
4	HEER LONG BASMATI RICE	24 MTS	A- 290040098	112.97	28,92,058/-

1.2 The Said Bill of Entry was assessed at the FAG site INMAA1 on 10.06.2024. Since, the goods are re-imported; first check was given with examination order as below:

"vfy seal no. of the container/s and open the seal in the supervision of Shed AC/DC. Examine all the packages and check marks and nos to check the desp as declared wrt shipping bills and invoice and establish identity of the goods. Vfy quantity. Look any other goods present in the cargo other than exported vide said SB/s. follow RMS/CCR instructions. Vfy payment particulars of reversal of DBK, RoDTEP availed, if any, and ensure to upload the same in e-sanchit. Mention any deviation noticed at the time of examination in the report"

1.3 Subsequent to that, examination report was fed in the ICES system by the DOCKS Officer on 21.06.2024 as:

*"Verified container no. & seal number and found in order as per BL. Vfd seal intact. Opened & visually examined goods under supervision of the DC(Docks) in presence of Customs Broker's representative. Verified declared product description and other details with invoice, packing list, bill of lading, shipping bill and other import documents. **Verified with both import and export documents and confirmed the identification with the export goods.** Vfd re-import if from the same party to whom they were exported. Vfd re-import is within time limit*

CFS WT.: 148350 kgs

BL WT.: 145152 kgs

Weight is excess by 3198 kgs. importer has claimed that the excess weight is due to the packaging material (wooden pallet). The aspect of any export benefit/incentives availed by the exporter may please be examined by the assessment group."

1.4 On-going through the Shipping Bills, export incentives claimed at the time of export are as below:

Sr. No.	SB No./Date	Drawback claimed	RoDTEP claimed
1	3572440 dated 30.08.2023	Rs. 984/-	Rs. 74,648/-
2	3572437 dated 30.08.2023	Rs. 984/-	Rs. 74,648/-

The above export incentives have been returned alongwith the applicable interest by the importer vide Challan No. 23/EXP/2024 all dated 12.06.2024.

1.5 The imported goods are edible items; therefore samples were forwarded to FSSAI for examination in FSSAI approved Laboratory. The Authorised Officer, FSSAI, Mundra/Kandla Port/SEZ vide their letter dated 13.12.2024 reported as below:

"..... the product of the given consignment Rice Heer Long Basmati 145152.000 KGS against BOE 3909175 dated 09/06/2024, in this consignment 4 batches of product were present. Out of 4 Batches, 2 Batches (Batch no. 90040091 and 90040098) got conformed by FSSAI accredited laboratory and found fit for human consumption and 2 batches ((Batch Number- 90040097 and 90040092) got rejected by FSSAI accredited primary laboratory and hence rejection was given by AO, Mundra (NCC No.- NCC202400040839 and NCC20240004198). After that importer has applied for retest. And the retest samples were sent to Referral laboratory. Referral laboratory also reported that the sample does not conform to the specifications laid down in Food Safety and Standards Act 2006 and Rules & Regulations made thereunder as Pesticide Residues "Thiamethoxam" exceeds the maximum tolerance limit. Hence, the sample is Rejected as per the Food Safety and Standards (Import) Regulation, 2017 (Re-test NCC No: RNCC202400000560 and RNCC202400000559). After that importer has filed first review application Dt. 12.11.2024 against this rejection report to the FSSAI Director (Western Region) Mumbai. As per review order passed by Director (Western Region) for the compliant Batches (Batch no. 90040091 and 90040098) the applicant may approach Custom Authority to amend the Bill of Entry for the release of the compliant batches. This office has no objection for Rice (Heer Long Basmati Batch no. 90040091 and 90040098) is released or cleared from this port before validity period of the NOC. However, the batches Heer Long Basmati (Batch Number- 90040097 and 90040092) which are rejected and found 'Unsafe' u/s sec 3(1)(zz)(xii) of FSS Act, 2006 and as they are failed in parameter "Thiamethoxam" and unfit for human consumption, are not be released or cleared from this port for the reasons mentioned above."

1.6 RELEVANT LEGAL PROVISIONS OF CUSTOMS ACT, 1962:

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.

.....

(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.

Section 28DA. Procedure regarding claim of preferential rate of duty. –

(10) Notwithstanding anything contained in this section, the preferential tariff treatment may be refused without verification in the following circumstances, namely:-

(ii) complete description of goods is not contained in the certificate of origin;

Section 46. Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

.....

(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.

Section 111. Confiscation of improperly imported goods, etc. – The following goods brought from a 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 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;

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:*

.....

Section 125. Option to pay fine in lieu of confiscation. -

(1) *Whenever confiscation of any goods is authorised 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:*

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) *Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]*

(3) *Where the fine imposed under sub-section (1) is not paid within a period of one*

hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.- For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]"

WRITTEN SUBMISSIONS AND RECORD OF PERSONAL HEARING

2.1 The importer vide their letter dated 02.01.2025 submitted the following:

"..... we would like to bring to your notice that we have exported "HEER LONG BASMATI RICE" vide shipping bill number 3572440 dt 30.08.23, 3572437 dt 30.08.23 from Mundra to France, but cargo was rejected by France Customs. And the same cargo was re-imported vide Bill of Entry number 3909175 dated 09.06.2024 at Mundra port.

As per re import procedure for Food cargo we follow all rules and completed that. However FSSAI passed and allowed to release the cargo of batch number 90040091 (48 MTs and 2400 Bags), 90040098 (24 MTs and 1200 Bags) and rejected the cargo of batch number 90040097 (24 MTs and 1200 Bags), 90040092 (48 MTs and 2400 Bags) vide Ref.NO. FSSAI/Mundra/Out//2024/188 dated 13.12.2024.

In view of the above we intend to procure the cargo pass by FSSAI of batch/ number 90040091 and 90040098 for local market and wish to re-export the rejected cargo of batch no 90040097, 90040092.

The above goods have been stored at bonded warehouse Mundra Warehousing Zone, Mundra. The Re-export will be under O.G.L and without any export benefit scheme.

We, therefore, request yourself to kindly allow us to take out of charge for Batch no 900400918 90040098 and permission for procure of re-export for the batch no 90040092 & 90040097 as mentioned the above. Also we don't want any SCN or PH for the same."

DISCUSSION AND FINDINGS

3.1 I have carefully gone through the case records. The importer vide letter dated 02.01.2025 has 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. "**Heer Long Basmati Rice Batch Nos. 90040097 and 90040092**" weighing 72 MTs and total valued at Rs. 86,63,056/- (Rupees Eighty Six Lakh Sixty Three Thousand and Fifty Six only) covered under Bill of Entry No. 3909175 dated 09.06.2024 as detailed in Table-I 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.

3.2 I find that Bill of Entry No. 3909175 dated 09.06.2024 was filed for clearance of re-import consignment of "HEER LONG BASMATI RICE" which was exported vide Shipping Bill Nos. 3572440 and 3572437 both dated 30.08.2023. Details of goods as declared in the Bill of Entry is mention in Table-I supra.

3.3 Further, I find that the said Bill of Entry was assigned to FAG for assessment and marked the same for examination. The examination was carried out by the officers of Docks Examination on 21.06.2024; identity of the imported goods against the export documents has been established, and samples were forwarded to FSSAI for examination in FSSAI approved Laboratory.

3.4 I have gone through the report dated 13.12.2024 received from FSSAI, Mundra/Kandla Port/SEZ, wherein they have informed that out of 4 Batches, 2 Batches (Batch No. 90040091 and 90040098) got confirmed by FSSAI accredited laboratory and found fit for human consumption and 2 Batches (Batch No. 90040097 and 90040092) got rejected. Further, the importer has applied for re-test and the samples were sent to Referral Laboratory. Referral Laboratory also reported that the sample does not conform to the specification laid down in Food Safety and Standard Act 2006 and Rules & Regulations made thereunder as Pesticide Residues "**Thiamethoxam**" exceeds the maximum tolerance limit. I find that the FSSAI has no objection for Rice (**Heer Long Basmati Rice Batch No. 90040091 and 90040098**) is released or cleared from this port before validity period of NOC. However, the batches (**Heer Long Basmati Rice Batch No. 90040097 and 90040092**) which are rejected and found '**'Unsafe'** u/s 3(1)(zz)(xii) of FSS Act, 2006 as they are failed in parameter "**Thiamethoxam**" and **unfit for human consumption**, are not to be released or cleared from this port.

3.5. I observe that the FSSAI has granted an NOC for clearance of the Rice (Heer Long Basmati Rice Batch No. 90040091 and 90040098) from this port. Therefore, I hold that the clearance allowed for only two batches (**Heer Long Basmati Rice Batch No. 90040091 and 90040098**) weighing 72 MTs and total valued at Rs. 88,04,756/- (Rupees Eighty Eight Lakh Four Thousand Seven Hundred Fifty Six only) covered under Bill of Entry No. 3909175 dated 09.06.2024.

3.6 In view of the forgoing discussion and FSSAI report dated 13.12.2024 I hold that by virtue of not having clearance of FSSAI authority, the "**Heer Long Basmati Rice Batch No. 90040097 and 90040092**" weighing 72 MTs and total valued at Rs. 86,63,056/- (Rupees Eighty Six Lakh Sixty Three Thousand and Fifty Six only) covered under Bill of Entry No. 3909175 dated 09.06.2024 are liable for confiscation under Section 111(d) of the Customs Act, 1962. The importer M/s L T Foods Limited is also liable for penalty under Section 112 (a) (i) of the Custom Act, 1962 for their act and omission to make goods liable for confiscation under Section 111 of the Custom Act, 1962.

3.7 I find that the importer, vide letter dated 02.01.2025, has requested the re-export of the goods (Batch Nos. 90040097 and 90040092). 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.

4. In view of above, I pass the following order:

ORDER

(i) I allow the clearance of **Heer Long Basmati Rice Batch Nos. 90040091 and 90040098** weighing 72 MTs and total valued at Rs. 88,04,756/- (Rupees Eighty Eight Lakh Four Thousand Seven Hundred Fifty Six only) covered under Bill of Entry No. 3909175 dated 09.06.2024 as the FSSAI has issued a NOC for the same, declaring it fit for human consumption.

(ii) I order for confiscation of **"Heer Long Basmati Rice Batch Nos. 90040097 and 90040092"** weighing 72 MTs and total valued at Rs. 86,63,056/- (Rupees Eighty Six Lakh Sixty Three Thousand and Fifty Six only) covered under Bill of Entry No. 3909175 dated 09.06.2024; in terms of Section 111(d) of the Customs Act, 1962. However, allow the redemption of the confiscated cargo on payment of redemption fine of Rs. 6,00,000/- (Rupees Six Lakhs only) in terms of Section 125 of the Customs Act, 1962. I allow the redemption only for re-export and not for home consumption.

(iii) I impose a penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) on the importer M/s L T Foods Limited under section 112(a)(i) of the Custom Act, 1962.

5. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by

Mukesh Kumari

Date: 06/02/2025 05:07:43

ADDITIONAL COMMISSIONER

Custom House, Mundra

To,

M/s L T Foods Limited (IEC 0592005801),
Near Gohalwar Varpal Railway Station,
Tarn Taran Road, Amritsar, Punjab - 143 022

Copy to:

1. The Dy./Asstt. Commissioner of Customs (RRA), Custom House, Mundra
2. The Dy./Asstt. Commissioner of Customs (TRC), Custom House, Mundra
3. The Dy./Asstt. Commissioner of Customs (EDI), Custom House, Mundra
4. Office Copy.