



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE, MUNDRA, 5-B, PORT USER BUILDING (PUB),
AP & SEZ, PORT ROAD, MUNDRA PORT, MUNDRA-370421**
Email-group1importmundra@gmail.com

A	File No.:	CUS/APR/BE/MISC/931/2023-Gr 1
B	Order-in-Original No.:	MCH/ADC/MK/122/2023-24
C	Passed by:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	24.07.2023
E	Date of issue:	24.07.2023
F	Importer:	M/s V.S. Trading (IEC-GJNPS0274Q), Vill. Shekhpur Chamu, Tehsil Isma, Kurukshetra, Haryana – 136129
G	SCN No. & Date	Importer waived SCN vide letter dated 21.07.2023
H	DIN	20230771MO000000FACE

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the **Commissioner of Customs (Appeal), Mundra**, having office at **7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009** in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It 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 certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. 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.

Sub.: Mis-Classification in import consignment covered under BE No. 6352031 dated 10.06.2023 by M/s V.S. Trading (IEC-GJNPS0274Q)- reg.

Brief Facts of the case

M/s. V.S. Trading (IEC-GJNPS0274Q), (hereinafter referred to as "said importer" for sake of brevity) having its registered address at Vill. Shekhpur Chamu, Tehsil Isma, Kurukshetra, Haryana - 136129, filed Bill of Entry No.6352031 dated 10.06.2023 through their CHA M/s. International Passage & Cargo (CHA CodeAAACI5787PCH001) for import of **L-Lysine Monohydro Chloride 98.5% Feed Grade 25 KG Per Bag (Animal Feed Supplement not for Human/Medicinal use)** declaring CTH as 23099090.

2. The above Bill of Entry No.6352031 dated 10.06.2023 was put on hold and examined at M/s. Landmark CFS, Mundra. The goods/cargo of the said bill of entry was stuffed in 07*40' Containers. The quantity of goods found during the examination found is 7560 Bags of even sizes each weighing 25Kgs each, which was as per the Import Documents viz. Bill of Lading & Bill of Entry. The description of the goods mentioned on the Bags is 'L-Lysine Monohydro Chloride 98.5% Feed Grade' i.e. as declared in the Bill of Entry.

3. Whereas, the importer has declared the imported goods i.e. L-Lysine Monohydro Chloride 98.5% Feed Grade under CTH 23099090; whereas, the relevant part of Chapter Sub-heading 2309 read as under:

2309 PREPARATIONS OF A KIND USED IN ANIMAL FEEDING

- 2309 10 00 - Dog or cat food, put up for retail sale
- 2309 90 - Other:
 - 2309 90 10 --- Compounded animal feed
 - 2309 90 20 --- Concentrates for compound animal feed
 - Feeds for fish (prawn, etc.):
 - 2309 90 31 ---- Prawn and shrimps feed
 - 2309 90 32 ---- Fish feed in powdered form
 - 2309 90 39 ---- Other
 - 2309 90 90 --- Other

3.1 Going through the above, it appears that the Chapter Sub-heading 2309 covers preparation of kind used in animal feed. Whereas, going through Chapter 29 of Section VI of the Customs Tariff Act, 1975, it

is observed that there is a specific Entry of "**Lysine and its Esters; salts thereof**" under CTH -29224100. Whereas, the relevant part of Chapter Sub-heading 2922 read as under:

2922

OXYGEN-FUNCTION AMINO-COMPOUNDS

- Amino-alcohols, other than those containing more than one kind of oxygen function, their ethers and esters; salts thereof:

2922 11 -- Monoethanolamine and its salts:

2922 11 10 --- Monoethanolamine

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- Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof:

2922 41 00 -- Lysine and its esters; salts thereof.

.....

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3.2 Whereas, Para No.5 of Circular No.80/54 /2018-GST dated 31.12.2018 issued by the Department of Revenue for Clarification regarding GST rates & classification (goods), clarify the dispute in classification of Animal Feed Supplements/feed additives from drugs between tariff heading 2309 and 2936. Wherein, para 5.5 of the said circular read as under:

"5.5. A product deserves classification chapter 29 (equally applicable to heading 2936), if it is an item of general use, e.g., if a product is of specific use, say dietary supplement for human being product particularly suitable for a specific use rather than for general use. Vitamins and provitamins are normally covered under code heading 2936, but if they're prepared as food supplements in the form of tablets, etc. they would not be classifiable under this heading as the way they are presented, they are suitable for a specific use. Heading 2309 would cover items like feed supplements for animals that contain vitamins and other ingredients - such as cereals and proteins. These are covered in chapter 23 under heading code 2309,

or antibiotic preparations used in animal feeding - for example a dried antibiotic mass on a carrier like cereal middling. The antibiotic content in these items is usually between 8% and 16%. Thus, HS code 2309 would cover only such product, which in the form supplied, are capable of specific use as food supplement for animals and not capable of any general use."

3.3 From the above, it appears that the impugned imported goods will be classifiable under CTH 2309 only if they are in the form supplied, are capable of specific use as food supplement for animals. Whereas, going through the packing of goods, it appears that the goods are mentioned under chemical name i.e. L-Lysine Monohydro Chloride [C6H14N2O2-HCL] and the supplier has affixed one small additional sticker on the bags mentioning "*L-Lysine Monohydro Chloride Feed Grade (Not for Human Use, Not for Medicinal Use, for Animal Feed Only)*"; which shows that the goods as such are not prepared as food supplements in the form of tablets, etc. for specific use.

4. In view of the above, the impugned imported goods appear to be correctly classifiable under CTH 29224100. Further, as per the import policy the goods falling under CTH-29224100 are "Free" to import. However, the goods falls under CTH 2922 are permitted subject to Registration and other requirements as administered by Drug Controller General of India under the provisions of Drugs and Cosmetics Act. However, the importer is required to submit the NOC for import from the Drug Controller that the goods imported which falls under CTH 2922 are Animal Feed & Not for Medicinal Use and also required labelled the goods as "**Animal Feed & Not for Medicinal Use**". In the instant case, the importer has submitted the above NOC and also affixed the above label.

5. In view of above, as the importer had mis-classified their imported goods as discussed above. Therefore, the said goods are liable for confiscation under Section 111 (m) of Customs Act 1962. Accordingly, the goods have been seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 04.07.2023 by the officer of SIIB, CH Mundra.

6. Quantification of Duty:

The details of the differential duty calculation as per CTH 29224100 and as declared by the importer under CTH 23099090 is as

under:

CTH	Quantit y in KG s	Price de clared i n BE pe r Kg (in USD)	Ex. Rate	Price d eclared in BE per KG (in Rs.)	Ass. Valu e (in Rs.)	Duty(effecti ve)	Total dut y payable (in Rs.)
23099090	189000	0.50	83.4	41.70	8495444	16.500%	1401749
29224100	189000	0.50	83.4	41.70	8495444	27.735%	2356212
Difference						11.235%	954463

From the above it is clear that the importer had mis-classified the imported goods to evade applicable duty on the same. Therefore, the importer is liable to pay the differential duty amounting to Rs. **9,54,463/-** for the reason of change in classification of the goods.

7. The importer vide their letter dated 21.07.2023 gave their consent for re-assessment of the Bill of Entry under CTH 29224100 and requested for the waiver of SCN/PH. Further, the importer has also submitted certificate No. NOC/NZ/2023/001406 dated 04.07.2023 issued from the Office of the Deputy Drugs Controller, Central Drug Standard Control Organization, North Zone, Gaziabad, UP.

8 . In view of the above, the goods imported vide Bill of Entry no. 6352031 dated 10.06.2023 appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importer has rendered themselves liable for penal action under Section 112(a) of Customs Act 1962.

9. Relevant Legal Provisions Applicable in this Case:-

The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

Section 2(25) defined the terms "Imported 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.

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.

(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 the² [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.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.

(3) For [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 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.

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.*

Section 110 of the Customs Act, 1962, provides for Seizure of goods, documents and things. - (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:.

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

...

...

(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;

....

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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 sub-section (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

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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.

Show Cause Notice & Personal Hearing

10. The importer vide their letter dated 21.07.2023 submitted that they don't want Show Cause Notice and Personal Hearing in this case. Further, they gave their consent for re-assessment of the Bill of Entry No. 6352031 dated 10.06.2023 under CTH 29224100 and they are ready to pay differential duty arises out for the reason of change in classification of the goods.

Discussion & Findings

11. I have carefully gone through the case records and applicable provisions of law. Importer vide letter dated 21.07.2023 submitted that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of principle of natural justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

11.1 I find that M/s V.S. Trading, Vill. Shekhpur Chamu, Tehsil Isma, Kurukshetra, Haryana – 136129 filed Bill of Entry No. 6352031 dated 10.06.2023 for clearance of “L-Lysine Monohydro Chloride 98.5% Feed Grade 25 KG Per Bag (Animal Feed Supplement not for Human/Medicinal use)” classifying the same under Chapter 23099090. The imported cargo under above Bill of Entry was put on hold by SIIB, Customs House, Mundra for detailed examination.

11.2 I find that The examination was carried out by the officers of SIIB at M/s Landmark CFS, Mundra. During examination, it was observed that the goods/cargo of the said bill of entry was stuffed in 07*40' Containers. The quantity of goods found during the examination found is 7560 Bags of even sizes each weighing 25 Kgs each, which was as per the Import Documents viz. Bill of Lading & Bill of Entry. The description of the goods mentioned on the Bags is 'L-Lysine Monohydro Chloride 98.5% Feed Grade' i.e. as declared in the Bill of Entry.

11.3 I find that the importer has declared the imported goods i.e. L-Lysine Monohydro Chloride 98.5% Feed Grade under CTH 23099090. As discussed in para 3 to 3.3, the impugned imported goods will be classifiable under CTH 2309 only if they are in the form supplied, are capable of specific use as food supplement for animals. Whereas, going through the packing of goods, it appears that the goods are mentioned under chemical name i.e. L-Lysine Monohydro Chloride [C6H14N2O2-HCL] and the supplier has affixed one small additional sticker on the bags mentioning "*L-Lysine Monohydro Chloride Feed Grade (Not for Human Use, Not for Medicinal Use, for Animal Feed Only)*"; which shows that the goods as such are not prepared as food supplements in the form of tablets, etc. for specific use.

11.4 I find that the impugned imported goods are correctly classifiable under CTH 29224100 which attracts higher rate of duty @ 27.735% instead of declared CTH 23099090 wherein total duty is 16.5%. Further, as per the import policy the goods falling under CTH-29224100 are "Free" to import. However, the goods falls under CTH 2922 are permitted subject to Registration and other requirements as administered by Drug Controller General of India under the provisions of Drugs and Cosmetics Act. However, the importer is required to submit the NOC for import from the Drug Controller that the goods imported which falls under CTH 2922 are Animal Feed & Not for Medicinal Use and also required labelled the goods as "**Animal Feed & Not for Medicinal Use**". In the instant case, the importer has submitted the above NOC and also affixed the above label.

11.5 I find that the importer vide their letter dated 21.07.2023 gave their consent for re-assessment of the Bill of Entry under CTH 29224100. It is clear that the importer had mis-classified the imported goods to evade applicable duty on the same. Therefore, the importer is liable to pay the differential duty amounting to Rs. **9,54,463/-** (as detailed in Para 6) for the reason of change in classification of the goods.

11.6 In view of the above, the acts of omission and commission of the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby rendering the importer liable for penalty under Section 112 of the Customs Act, 1962.

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

ORDER

12.1 I reject the declared classification of imported goods declared as "L-Lysine Monohydro Chloride 98.5% Feed Grade 25 KG Per Bag (Animal Feed Supplement not for Human/Medicinal use)" which was classified under CTH 23099090 and order the same to be re-classified under CTH 29224100.

12.2 I order to recover the differential duty amounting to Rs. **9,54,463/-** arises out for the reason of change in classification of the goods from the importer M/s V.S. Trading.

12.3 I order for confiscation of the goods imported vide Bill of entry No. 6352031 dated 10.06.2023 having an assessable value of Rs. **84,95,444/-** (Rupees Eighty Four Lakhs Ninety Five Thousand Four Hundred Forty Four Only) under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of Rs. 1,00000/- (Rupees One Lakhs Only) under Section 125 of the Customs Act, 1962 for home consumption.

12.4 I impose a penalty of Rs.50,000/- (Rupees Fifty Thousand Only) on the importer M/s V.S. Trading under Section 112(a)(ii) of the Customs Act, 1962.

13. The investigation report issued vide F.No. S/43-122/V.S.Trading/SIIB-C/CHM/2023-24 dated 14.07.2023 by Deputy Commissioner of Customs, SIIB, CH Mundra is hereby disposed of.

Signed by
Mukesh Kumari
Additional Commissioner
Date: 24-07-2023 17:40:29
Import Section, CH Mundra

F.No. CUS/APR/BE/MISC/931/2023-Gr 1 Date:24-07-2023

To,

M/s. V.S. Trading (IEC-GJNPS0274Q),

I/1312022/2023

Vill. Shekhpur Chamu, Tehsil Isma,
Kurukshetra, Haryana – 136129

Copy to:-

1. The Deputy Commissioner of Customs, RRA/Customs House, Mundra.
2. The Deputy Commissioner of Customs, TRC/Customs House, Mundra.
3. The Deputy Commissioner of Customs, EDI/Customs House, Mundra.
4. The Deputy Commissioner of Customs, SIIB/Custom House, Mundra.
5. Guard File.