

**OFFICE OF THE COMMISSIONER****CUSTOM HOUSE, KANDLA****NEAR BALAJI TEMPLE, NEW KANDLA****Phone : 02836-271468/469 Fax: 02836-271467**

DIN- 20241071ML000000E5A2

A	File No.	GEN/ADJ/ADC/2083/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/VS/26/2024-25
C	Passed by	Vishwajeet Singh Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	12.10.2024
E	Date of Issue	12.10.2024
F	SCN NO. & Date	GEN/ADJ/ADC/2083/2024-Adjn-O/o Commr-Cus-Kandla dated 11.10.2024
G	Noticee / Party / Importer / Exporter	M/s Elite Agro Specialities (IEC-1098004264) 14/19, SIDCO Ind. Estate, PO-Peringandoor, Thrissur-680581

1. यहमूलआदेशसंबंधितकोनि:शुल्कप्रदानकियाजाताहै।

This Order - in - Original is granted to the concerned free of charge.

2. यदिकोईव्यक्तिइसमूलआदेशसेअसंतुष्टहैतोवहसीमाशुल्कअपीलनियमावली 1982 केनियम3 केसाथपठितसीमाशुल्कअधिनियम 1962 कीधारा12 8A केअंतर्गतप्रपत्रसीए- 1- मेंचारप्रतियोगीमेंनीचेबताएगाएपतेपरअपीलकरसकताहै-

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:

“सीमाशुल्कआयुक्त (अपील),

वीं 7मंजिल,मृदुलटावर,टाइम्सऑफइंडियाकेपीछे,आश्रमरोड,अहमदाबाद380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,

Ashram Road, Ahmedabad-380009.”

3. उक्तअपीलयहआदेशभेजनेकीदिनांकसे60 दिनकेमीतरदाखिलकीजानीचाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्तअपीलकेपरन्यायालयशुल्कअधिनियमकेतहत5/-

रूपएकाटिकटलगाहोनाचाहिएऔरइसकेसाथनिम्नलिखितअवश्यसंलग्नकियाजाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

(i) उक्तअपीलकीएकप्रतिऔर

A copy of the appeal, and

(ii) इसआदेशकीयहप्रतिअथवाकोईअन्यप्रतिजिसपरअनुसूची-1 केअनुसारन्यायालयशुल्कअधिनियम-1870 केमदसं°-6 मेंनिर्धारित5/- रूपयेकान्यायालयशुल्कटिकटअवश्यलगाहोनाचाहिए।

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. अपीलज्ञापनकेसाथडूटी/ ब्याज/ दण्ड/ जुर्मानाआदिकेमुगतानकाप्रमाणसंलग्नकियाजानाचाहिये।

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

5. अपीलप्रस्तुतकरतेसमय, सीमाशुल्क अपील (नियम, 1982 औरसीमाशुल्कअधिनियम, 1962

केअन्यसभीप्रावधानोंकेतहतसभीमामलोंकापालनकियाजानाचाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

BRIEF FACTS OF THE CASE

Intelligence gathered by the Officer of Special Intelligence Investigation Branch (SIIB) of Custom House Kandla indicated that in guise of “*Organic Non Basmati White Rice*” M/s. Elite Agro Specialities (IEC-1098004264) 14/19, SIDCO Ind. Estate, PO-Peringandoor, Thrissur-680581 is exporting non-organic rice, which is a prohibited item for export as per the policy conditions. Acting upon the said intelligence, this office has issued a letter F. No. CUS/SIIB/HOC/69/2024 dated 01.08.2024 to the Deputy / Assistant Commissioner (DE) & (DP) requesting to hold the cargo pertaining to M/s. Reliteaur Foods Pvt. Ltd being exported in vessel MV Della. The officers of SIIB section examined the cargo, shipped on board of the vessel MV Della.

BRIEF OF THE CASE-

2. It was noticed that under 73 Shipping Bills total 19100 MTS (No. of Bags 734000) cargo i.e. Organic Non Basmati Rice was shipped on board of the vessel MV Della by M/s Reliteaur Foods Pvt. Ltd. (*hereinafter also referred to as “Exporter”*) (S/B details are attached at **Annexure-A**). The whole cargo was packed in 25 kg and 50 Kg bag packing under different brands. Two brands i.e. “Nisri” and “Classic Mulher” was in packaging of 25 Kgs bags and “Akwaba” brand was packed in 50 Kgs Bags as detailed hereunder;

Sr.No	Brand	Shipping Bills No and Date
1	Nisri	1679443, 1680333, 1680325, 1680324, 1681454, 1681440, 1681451, 1682296, 1681457, 1682097, 1682090, 1682095, 1682105, 1682093, 1682880, 1682887, 1682888, 1682881, 1682864, 1684402, 1684404, 1684409, 1684394, 1684405, 1685520, 1684750, 1684751, 1684746, 1684737, 1684979, 1684984, 1684976, 1684968, 1684981 all dated 14.06.2024
2	Classic Mulher	1711701, 1711897, 1711986, 1712219, 1712217, 1711323, 1712508, 1712505, 1712514, 1712513 all dated 15.06.2024 1719450, 1719637, 1719888, 1720034, 1720162, 1721456, 1722169, 1724261, 1724264, 1724239 all dated 17.06.2024 1784287, 1790848, 1790834, 1788806, 1788797, 1788796, 1790419, 1790407, 1790402 all dated 19.06.2024 1822212, 1822224, 1822215, 1822205 all dated 20.06.2024
3	Akwaba	1822444, 1823383, 1823375, 1823382, 1823385, 1823378 all dated 20.06.2024

Brand wise 3 sets of the representative samples, pertaining to the cargo of M/s Reliteaur Foods Pvt. Ltd. were drawn under Panchnama dated 02/03.08.2024 from the vessel MV Della.

3. It was further noticed that another consignment of "Organic non-Basmati rice (white rice)" of the same exporter was being shipped in the vessel MV South Wind-I and therefore the same were also put on hold and SIIB officers have examined the cargo onboard of the vessel under panchnama dated 04.08.2024. It was noticed that total 6670 MTS quantity of the cargo i.e. Organic Non Basmati Rice under 27 shipping bills (as detailed in attached **Annexure-B**) was being shipped onboard of the vessel MV South Wind-I berthed at Jetty No.4 at Kandla Port. The cargo was found packed in 25 kg and 50 Kg bag packing under different brands as detailed hereunder:

Sr.No	Brand	Shipping Bills No and Date
1	Bon Riz – 50 Kgs	2310936 & 2317106 both dated 10.07.2024
2	Bon Riz – 25 Kgs	2317094 & 2317113 both dated 10.07.2024
3	Sapphire	2244986, 2245108, 2245107, 2245109, 2245101, 2245106 all dated 07.07.2024.
4	Sapphire Riz	2411995, 2412000, 2412001, 2411996 all dated 14.07.2024.
5	Ginny Yellow	2244941, 2244945 & 2244943 all dated 07.07.2024
6	Tilemsi	2245138, 2245238, 2245241 & 2245239 all dated 07.07.2024
7	Gardenia	2244942 & 2244987 both dated 07.07.2024
8	Ma Famille	2241078 dated 06.07.2024 and 2244940, 2244944, 2244947 all dated 07.07.2024

4. Total 16 representative samples, from the cargo of the exporter M/s Reliteaur Foods Pvt. Ltd., drawn from the above said two vessels [i.e. MV Della and MV South Wind-I] were send to the CRCL, New Delhi on 07.08.2024 vide Test Memo No. 133-148/2024 dated 05.08.2024. Considering the exporters request letter dated 13.08.2024, second set of samples were send to the APEDA authorized laboratory M/s. Accurate Universal Laboratories Private Limited, Ahmedabad since Test Results from CRCL, New Delhi getting delayed.

5. As per Notification 20/2023 dated 20.07.2023 issued by DGFT, the export of Non Basmati White Rice, falling under CTH 10063090, was prohibited while export of Organic Non Basmati Rice was permissible in accordance with Notification No. 03/2015-2020 dated 19.04.2017 read with Notification 45/2015-20 dated 29.11.2022. As per Notification No. 03/2015-2020 dated 19.04.2017, exemption from any quantitative ceiling or restrictions for export of Organic Non Basmati White Rice has been granted subject to the certification obtained from APEDA as organic under the National Program for Organic Production (NPOP).

5.1 The exporters have declared the cargo as Organic Non Basmati Rice (White Rice) under CTH 10063090 and submitted the provisional transaction certificates issued by Sikkim State Organic Certification Agency (SSOCA), which was APEDA authorized accredited certification agency. On the basis of the said provisional transaction certificates issued by (SSOCA), Let Export Orders to the above referred Shipping Bills were granted by the proper officer of Customs.

5.2 For verification of the genuineness of the said provisional transaction certificates, correspondence letters dated 04.08.2024, 09.08.2024, 12.08.2024, 14.08.2024 etc. were issued to the certification issuing authority i.e. Agricultural and Processed Food Products Export Development Authority (APEDA) and Sikkim State Organic Certification Agency (SSOCA). The Sikkim State Organic Certification Agency" (SSOCA), vide it's mail dated 12/13-08-2024 has informed that:

- (i) "*This is generated from online portal of APEDA and is of our registered operator. All this project is under continuous audit and verification*". (mail dated 12.08.2024)
- (ii) "*All this PTC and TC is generated from the online Tracenet portal of APEDA and is of registered operator. All this Project is under continuous audit and verification, operator is registered with SSOCA and any further queries please lets us know*". (mail dated 12.08.2024)
- (iii) "*Already two confirmations were sent as confirmations for said TCs. Please find a confirmation email copy attached for your reference once again. PTC was generated from the Tracenet and can be verified online always*". (mail dated 13.08.2024)

5.3 Meanwhile, in response to this office correspondence, the General Manager, APEDA New Delhi vide their letter APEDA-ORG/31/2024-25 dated 13th August 2024 (**RUD-1**) (which was received on 16-08-2024) has replied that:

“Considering the serious violations reveled in the enquiry as explained earlier, the rice shipments by M/s. Reliteaur Foods Pvt. Ltd and also by M/s. Elite Agro Specialties may not be allowed.

Thus outcome of the investigation and decision of the NAB in this matter will be conveyed in due course, shortly.

You are also requested to kindly provide the details of all the shipping bills and supporting documents submitted by M/s. Reliteaur Foods Pvt. Ltd. & M/s. Elite Agro Specialties so that a detailed investigation may be carried out of their complete supply chain”.

5.4 The above letter of the APEDA refers violation of certification in supply chain of the exporter as per NPOP norms and therefore in the matter an investigation was initiated by the APEDA. Therefore, on the basis of above said APEDA letter dated 13.08.2024, a letter dated 16.08.2024 to the AC (Export) was issued for cancellation of the LEO in r/o all the above referred 100 Shipping Bills. Accordingly, AC (Export) has cancelled all the Let Export Orders on the same day (i.e.16.08.2024). Copy of the said letter dated 16.08.2024 was also marked to the exporter with request to unload the cargo to release the vessels. An another letter dated 17.08.2024 was also issued to the exporter intimating the cancellation of Let Export Orders of their Shipping Bills and again requested them to unload the cargo from the vessels to release the subject vessels and for necessary action under the Customs Act,1962.

6. M/s. Accurate Universal Laboratories Private Limited, Ahmedabad has furnished Test Reports on 16-08-2024 concluding that: ***“In the opinion of the undersigned the submitted sample conforms to NPOP specifications for the parameters tested above”***. Further, the CRCL, New Delhi has furnished 16 Test Reports all dated 23.08.2024 concluding that ***“sample under reference has the characteristics of non basmati raw rice and it may be considered as organic rice”***. The said Test Reports have also been communicated to the exporter at the material time.

7. From the EDI system, it is also noted that M/s. Elite Agro Specialities [IEC-1098004264], 14/19, SIDCO Ind. Estate, PO-Peringandoor, Thrissur-680581 has also shipped total 16700 MT “Organic non-Basmati rice (white rice)” under CTH-10003090 on the vessel MV South Wind-I under 65 Shipping Bills having FOB value of Rs.64.76 Cr, as detailed in attached **Annexure-C**. M/s. Elite Agro Specialities vide their letter dated 08.10.2024 has also made similar request for cancellation of their existing Shipping Bills under Section 149 of the Customs Act, 1962 and allow export of the cargo under fresh Shipping Bills with description

“Non-Organic White Rice” at new export price of 490 USD per Metric Ton and allow to sail the vessel since heavy detention charges are incurring.

8. The exporter *M/s. Reliteaur Foods Pvt. Ltd.* filed an appeal before the Hon’ble High Court of Gujarat vide SCA No. 12418/2024 on 20.08.2024, which has been disposed off.

9. In response to this office mail dated 14.09.2024, the APEDA vide their mail dated 19.09.2024 has informed that:

“The decision of the NAB sub committee w.r.t M/s. Reliteaur Foods Pvt. Ltd. communicated vide order dated 29.08.2024 that the exporter has been Withdrawal of certification for 2 years from the date of issuance of order (i.e. 29.08.2024).”

- a. *Withdrawal of certification of M/s Reliteaur Foods Pvt Ltd for a period of two years from the date of issue of this order.*
- b. *To impose pecuniary penalty of Rs.10 lakhs on M/s Reliteaur Foods Pvt Ltd.*
- c. *Transaction Certificates issued for procurement of organic non basmati rice from the processing units audited and found non compliant or non operational to be canceled, as the organic integrity of the product”.*

However, in-spite of the reminder mails, the APEDA authority has not provided copy of the order dated 29.08.2024, referred in their above mail dated 19.09.2024.

10.1 The Chairman, APEDA, New Delhi in his letter APEDA-ORG/31/2024-25 dated 30.09.2024 (**RUD-2**) mentioned that based on the detailed investigation in the matter it was established that the said consignments were of conventional rice and accordingly an order dated 29.08.2024 (**RUD-3**) was passed by the APEDA, against the said exporter. In view of the above, as the shipment is no longer being classified as organic, the matter is placed before the DGFT and Customs for their consideration of the exporter’s request to cancel the existing export documents and to file fresh documents as per latest notification to export the cargo as conventional Non-Basmati rice.

11. Both the exporters *M/s. Reliteaur Foods Pvt. Ltd. & M/s. Elite Agro Specialities* vide their individual letters dated 08.10.2024 mentioned reason for change in description of the cargo from “Organic Non-Basmati Rice (white rice)” to “Non-organic White Rice” that due to change in nature cargo can no longer be classified as “Organic”. Under the said letters they further requested for cancellation of the existing Shipping Bills under Section 149 of the Customs Act, 1962 and allow export of the cargo under fresh Shipping Bills with description

“Non-Organic White Rice” at new export price of 490 USD per Metric Ton and allow to sail the vessels since heavy detention charges are incurring.

12. From the above referred APEDA letters dated 13.08.2024 and 30.09.2024 it is noted that APEDA in their investigation has found violation in supply chain, in r/o the export cargo pertaining to the both exporters, and concluded that cargo do not meet the requirement as per NPOP norms. Therefore, NAB Committee vide their order dated 29.08.2024 has withdrawn the certification of the exporters for 02 years and also imposed penalty upon them. The exporters in their letters dated 08.10.2024 also accepted the same and requested for cancellation of the existing Shipping Bills and to allow export under fresh Shipping Bills with description “Non-Organic White Rice” at new export price of 490 USD per Metric Ton in accordance with the DGFT Not. No. 31/2024-25 dated 28.09.2024.

In view of the above, it appears that the cargo was mis-declared by the exporter in the Shipping Bills as “Organic Non-Basmati Rice (white rice)”, while in actual cargo in question was Non-Organic, which have now been accepted by the exporter. Thereby, it appears that the exporter deliberately mis-declared the cargo in the Shipping Bills as “Organic Non-Basmati Rice (white rice)” to avoid the prohibitions and export the cargo. In light of the provisions of Section 50 of the Customs Act, 1962, the exporter is under legal obligation to make accurate and truth declaration in the Shipping Bills but they failed to do so.

The investigation pertaining to M/s. Reliteaur has culminated into SCN F.No. GEN/ADJ/ADC/2080/2024-Adjn-O/o Commr-Cus-Kandla. Therefore this show cause notice is in respect of only M/s. Elite Agro specialities.

Therefore, in view of the above, the 16700 MT cargo (as detailed in Annexure-C) becomes liable for confiscation under Section 113(d) of the Customs Act, 1962 and liable for penalty under Section 114 (i) of the Customs Act, 1962. Therefore, M/s. Elite Agro Specialities (IEC-1098004264) has rendered themselves liable for penal action under section 114 (i) of the Customs Act 1962.

13. In the matter statement of Shri Suresh Rameshchandra Ghildyal, F card holder of the Customs Broker firm M/s. Trueblue Shipping Services, Gandhidham was recorded on 09.10.2024 under Section 108 of the Customs Act, 1962. Under the said statement the CB has interalia stated that: on behalf of the exporters M/s. Reliteaur Foods Pvt. Ltd. & M/s. Elite Agro Specialities they filed the Shipping Bills under CTH--10003090 for export of “Organic Non Basmati Rice (White Rice)”; on behalf of the said exporters they filed Shipping Bills with

Custom House, Kandla in 2024 only; they are not aware about the APEDA / NPOP rules & regulations; as per exporter's instructions and availability of the cargo, they filed Shipping Bills on behalf of the said exporters for export of "*Organic Non Basmati White Rice*"; exporter themselves arrange go-downs in Gandhidham on rental basis to store the export cargo; after arrival of complete quantity of the export cargo and getting instructions from the exporter we file Shipping Bills on the basis of export documents; they are not aware that from where and from whom exporter procured the export cargo; the docks officer examine the cargo and thereafter granted LEO; after granting LEO, cargo is shipped on board of the respective vessel under supervision of the Dock Preventive Officer; they are aware about holding of the vessels due to APEDA issue etc.

14. In light of the above referred letters of the APEDA dated 13.08.2024, 30.09.2024 and order dated 29.08.2024, it appeared that the export cargo in question was "Non-Organic", while the same was mis-declared by the exporter in the Shipping Bills as "**Organic** Non-Basmati Rice (white rice)". Thereby, it appeared that the exporters have deliberately mis-declared the cargo in the Shipping Bills as "Organic Non-Basmati Rice (white rice)" to circumvent the prohibitions imposed upon export of white non-basmati rice. Whereas, in light of the provisions of Section 50 of the Customs Act, 1962, they were under legal obligation to make accurate and truth declaration in the Shipping Bills but they failed to do so.

15. Therefore, under the reasonable belief that the exporter has deliberately mis-declared the cargo in the Shipping Bills as "*Organic Non Basmati rice (White Rice)*" and hence the same appeared to be liable for confiscation under Section 113 the Customs Act, 1962. Thus, under the reasonable belief that the said export consignments are liable for confiscation under Section 113 of the Customs Act, 1962, under Section 110(1) of the Customs Act, 1962, the same have been put under Seizure vide 03 Seizure Memos (**RUD-4**) all dated 10.10.2024, as detailed hereunder:

- (i) 16700 MTS "*Organic Non Basmati rice (White Rice)*" valued of Rs. 64.74 Crores covered under 65 Shipping Bills pertaining to the exporter M/s. Elite Agro Specialities.

16. In view of the above, it appears that the cargo was mis-declared by the exporters in their Shipping Bills as "Organic Non-Basmati Rice (white rice)", while in actual cargo in question was "Non-Organic", which have now been accepted by the exporters as they themselves vide their letters dated 08.10.2024 have requested for cancellation of their existing Shipping Bills and allow export of the same cargo under correct classification of

“Non-Organic White Rice”. Thereby, it appears that the exporters have deliberately mis-declared the cargo in the Shipping Bills as “Organic Non-Basmati Rice (white rice)” to avoid the prohibitions imposed upon export of “Non-Organic White Rice”. Whereas, in light of the provisions of Section 50 of the Customs Act, 1962, the exporter is under legal obligation to make accurate and truth declaration in the Shipping Bills but they failed to do so.

17. Therefore, M/s. Elite Agro Specialities (IEC-1098004264) 14/19, SIDCO Ind. Estate, PO-Peringandoor, Thrissur-680581 are hereby called upon to show cause as to why;

- i. 16700 MT cargo valued of Rs. 64.76 Cr. covered under 65 Shipping Bills (as detailed in the attached Annexure-C) pertaining to M/s. Elite Agro Specialities should not be held liable for confiscation under section 113 (d) of the Customs Act, 1962.
- ii. Penalty should not be imposed upon them under Section 114 (i) of the Customs Act, 1962.

18. The above show cause notice was served upon the noticee vide email as well the same was handed over to the authorized representative of the noticee.

PERSONAL HEARING-

19. Opportunity of personal hearing was provided to the noticee on 11.10.2024. Mr.Jatine Gupta, CB, appeared for personal hearing and submitted the written submission and reiterated the grounds of appeal. He further submitted that he was doing a proper export with all legal documentation. His goods were always free to export and he had all the necessary documents. Subsequently, now his goods have been subjected to fumigation so their identity has changed. But DGFT has by notification declared the white rice also free to export. He said that he is incurring heavy loss on the rent and retention of the vessels etc. He impressed upon the case laws cited in his written submission. He has requested to release the goods for export.

SUBMISSION-

20. M/s. Elite agro specialities in their submission dated 11.10.2024, interalia, submitted that-

- (i) At the time of export, they were duly registered with APEDA.

- (ii) The test reports in r/o- samples drawn by the customs confirmed that the levels of pesticides, insecticides and other chemical residues in the cargo were within the permissible limits defined by NPOP standards for organic produce. The sample was identified as non basmati and organic.
- (iii) The decision of APEDA to cancel the licence was taken unilaterally without giving any opportunity of hearing.
- (iv) They have also relied on various case laws.
- (v) They have also highlighted the deterioration of cargo, detention and demurrage charges incurred by them.

DISCUSSION AND FINDINGS-

- 21. I have carefully gone through the Show Cause Notice dated 11.10.2024, record of personal hearing, written submission and all the evidences available on record.
- 22. The issues to be decided before me are:-
 - i. Whether 16700 MT cargo valued at Rs. 64.76 Cr. covered under 65 Shipping Bills (as detailed in the attached Annexure-C) pertaining to M/s. Elite Agro Specialities is liable for confiscation under section 113 (d) of the Customs Act, 1962.
 - ii. Whether Penalty is imposable upon them under Section 114 (i) of the Customs Act, 1962.
- 23. I find that the exporter M/s. Elite Agro Specialities [IEC-1098004264], 14/19, SIDCO Ind. Estate, PO-Peringandoor, Thrissur-680581 has shipped total 16700 MT "Organic non-Basmati rice (white rice)" under CTH-10003090 on the vessel MV South Wind-I under 65 Shipping Bills having FOB value of Rs.64.76 Cr, as detailed in Annexure-C as given below:-

Annexure-C

SR.NO	Exporter	SHIPPING BILL	DATE	NET WT.(MT)	FOB VALUE (INR)
1	ELITE AGRO SPECIALITIES	2236899	06.07.2024	250	9613875
2	ELITE AGRO SPECIALITIES	2237389	06.07.2024	250	9613875
3	ELITE AGRO SPECIALITIES	2237411	06.07.2024	250	9613875
4	ELITE AGRO SPECIALITIES	2237424	06.07.2024	250	9613875
5	ELITE AGRO SPECIALITIES	2292113	09.07.2024	260	10256454
6	ELITE AGRO SPECIALITIES	2237490	06.07.2024	240	9467496
7	ELITE AGRO SPECIALITIES	2237515	06.07.2024	270	10449972
8	ELITE AGRO SPECIALITIES	2237550	06.07.2024	270	10449972
9	ELITE AGRO SPECIALITIES	2237580	06.07.2024	270	10449972

SR.NO	Exporter	SHIPPING BILL	DATE	NET WT.(MT)	FOB VALUE (INR)
10	ELITE AGRO SPECIALITIES	2237610	06.07.2024	270	10449972
11	ELITE AGRO SPECIALITIES	2237634	06.07.2024	270	10449972
12	ELITE AGRO SPECIALITIES	2237660	06.07.2024	270	10449972
13	ELITE AGRO SPECIALITIES	2237667	06.07.2024	270	10449972
14	ELITE AGRO SPECIALITIES	2237701	06.07.2024	270	10449972
15	ELITE AGRO SPECIALITIES	2237705	06.07.2024	270	10449972
16	ELITE AGRO SPECIALITIES	2237731	06.07.2024	270	10449972
17	ELITE AGRO SPECIALITIES	2237734	06.07.2024	270	10449972
18	ELITE AGRO SPECIALITIES	2237749	06.07.2024	270	10449972
19	ELITE AGRO SPECIALITIES	2237748	06.07.2024	270	10449972
20	ELITE AGRO SPECIALITIES	2237763	06.07.2024	270	10449972
21	ELITE AGRO SPECIALITIES	2237773	06.07.2024	270	10449972
22	ELITE AGRO SPECIALITIES	2237798	06.07.2024	270	10449972
23	ELITE AGRO SPECIALITIES	2237823	06.07.2024	280	11114880
24	ELITE AGRO SPECIALITIES	2237853	06.07.2024	280	11114880
25	ELITE AGRO SPECIALITIES	2237883	06.07.2024	280	11114880
26	ELITE AGRO SPECIALITIES	2240198	06.07.2024	160	6351360
27	ELITE AGRO SPECIALITIES	2238174	06.07.2024	270	10650933
28	ELITE AGRO SPECIALITIES	2238352	06.07.2024	230	9073017
29	ELITE AGRO SPECIALITIES	2240357	06.07.2024	270	10382985
30	ELITE AGRO SPECIALITIES	2240624	06.07.2024	270	10382985
31	ELITE AGRO SPECIALITIES	2240325	06.07.2024	270	10382985
32	ELITE AGRO SPECIALITIES	2239437	06.07.2024	270	10382985
33	ELITE AGRO SPECIALITIES	2239446	06.07.2024	270	10382985
34	ELITE AGRO SPECIALITIES	2239454	06.07.2024	270	10382985
35	ELITE AGRO SPECIALITIES	2239463	06.07.2024	270	10382985
36	ELITE AGRO SPECIALITIES	2239478	06.07.2024	270	10382985
37	ELITE AGRO SPECIALITIES	2239492	06.07.2024	270	10382985
38	ELITE AGRO SPECIALITIES	2239502	06.07.2024	270	10382985
39	ELITE AGRO SPECIALITIES	2239551	06.07.2024	270	10382985
40	ELITE AGRO SPECIALITIES	2239607	06.07.2024	270	10382985
41	ELITE AGRO SPECIALITIES	2239623	06.07.2024	270	10382985
42	ELITE AGRO SPECIALITIES	2239622	06.07.2024	270	10382985
43	ELITE AGRO SPECIALITIES	2239648	06.07.2024	270	10382985
44	ELITE AGRO SPECIALITIES	2239656	06.07.2024	270	10382985
45	ELITE AGRO SPECIALITIES	2240218	06.07.2024	80	3076440
46	ELITE AGRO SPECIALITIES	2239674	06.07.2024	270	10382985
47	ELITE AGRO SPECIALITIES	2239680	06.07.2024	270	10382985
48	ELITE AGRO SPECIALITIES	2239713	06.07.2024	60	2307330
49	ELITE AGRO SPECIALITIES	2240075	06.07.2024	270	10382985
50	ELITE AGRO SPECIALITIES	2240086	06.07.2024	270	10382985
51	ELITE AGRO SPECIALITIES	2240102	06.07.2024	270	10382985

SR.NO	Exporter	SHIPPING BILL	DATE	NET WT.(MT)	FOB VALUE (INR)
52	ELITE AGRO SPECIALITIES	2240109	06.07.2024	190	7306545
53	ELITE AGRO SPECIALITIES	2245314	07.07.2024	270	10572781.5
54	ELITE AGRO SPECIALITIES	2245362	07.07.2024	270	10572781.5
55	ELITE AGRO SPECIALITIES	2245361	07.07.2024	270	10572781.5
56	ELITE AGRO SPECIALITIES	2245358	07.07.2024	270	10572781.5
57	ELITE AGRO SPECIALITIES	2245360	07.07.2024	270	10572781.5
58	ELITE AGRO SPECIALITIES	2245359	07.07.2024	270	10572781.5
59	ELITE AGRO SPECIALITIES	2245366	07.07.2024	270	10572781.5
60	ELITE AGRO SPECIALITIES	2245363	07.07.2024	270	10572781.5
61	ELITE AGRO SPECIALITIES	2245371	07.07.2024	270	10572781.5
62	ELITE AGRO SPECIALITIES	2245370	07.07.2024	270	10572781.5
63	ELITE AGRO SPECIALITIES	2247791	08.07.2024	270	10449972
64	ELITE AGRO SPECIALITIES	2247790	08.07.2024	270	10449972
65	ELITE AGRO SPECIALITIES	2247801	08.07.2024	140	5418504
				16700	647578215

24. I find that as per Notification 20/2023 dated 20.07.2023 issued by DGFT, the export of Non-Basmati White Rice, falling under CTH 10063090, was prohibited while export of Organic Non-Basmati Rice was permissible in accordance with Notification No. 03/2015-2020 dated 19.04.2017 read with Notification 45/2015-20 dated 29.11.2022. As per Notification No. 03/2015-2020 dated 19.04.2017, exemption from any quantitative ceiling or restrictions for export of Organic Non Basmati White Rice has been granted *subject to the certification obtained from The Agricultural and Processed Food Products Export Development Authority (APEDA) as organic under the National Program for Organic Production (NPOP)*. Therefore, it is amply clear that the certification from APEDA is quintessential for exporting Organic Non-Basmati White Rice.

25. I find that the exporter has declared the cargo as Organic Non-Basmati Rice (White Rice) under CTH 10063090 and submitted the *provisional transaction certificates* issued by Sikkim State Organic Certification Agency (SSOCA), which was APEDA authorized accredited certification agency. On the basis of the said provisional transaction certificates issued by (SSOCA), Let Export Orders to the above referred Shipping Bills were granted by the proper officer of Customs.

26. On verification of the genuineness of the said provisional transaction certificates, correspondence letters dated 04.08.2024, 09.08.2024, 12.08.2024, 14.08.2024 etc. were issued to the certification issuing authority i.e. Agricultural and Processed Food Products

Export Development Authority (APEDA) and Sikkim State Organic Certification Agency (SSOCA). The Sikkim State Organic Certification Agency" (SSOCA), vide it's mail dated 12/13-08-2024 has informed that:

- (i) "This is generated from online portal of APEDA and is of our registered operator. All this project is under continuous audit and verification". (mail dated 12.08.2024)
- (ii) "All this PTC and TC is generated from the online Tracenet portal of APEDA and is of registered operator. All this Project is under continuous audit and verification, operator is registered with SSOCA and any further queries please lets us know". (mail dated 12.08.2024)
- (iii) "Already two confirmations were sent as confirmations for said TCs. Please find a confirmation email copy attached for your reference once again. PTC was generated from the Tracenet and can be verified online always". (mail dated 13.08.2024)

27. On going through the above evidences in the form of emails, it is evident that the provisional transaction certificates were duly issued or generated by the SSOCA (authorized accredited certification agency of APEDA) and the same were valid on the day of filing of shipping Bill.

28. I find that in response to this office mail dated 14.09.2024, the APEDA vide their mail dated 19.09.2024 has informed that the certificate issued to them had been withdrawn for a period of two years from the date of order dated 29.08.2024. It is clear that the order had prospective effect and therefore the argument of the noticee that their certification was valid on the day of filing of shipping Bill has merit. Despite various emails written to the APEDA, copy of order dated 29.08.2024 was not provided to this office.

29. Further, I find that the Chairman, APEDA, New Delhi in his letter APEDA-ORG/31/2024-25 dated 30.09.2024 (RUD-2) mentioned that based on the detailed investigation in the matter it was established that the said consignments were of conventional rice. The Chairman, APEDA vide their letter dated 30.09.2024 has also referred the request of the exporter, to file fresh documentation to export the product as conventional Non-Basmati rice, to this office for consideration as the shipment was no longer classified as Organic.

30. It is clear that the certification required for exporting Organic Non-Basmati rice has been withdrawn for a period of two years from the date of issue of order dated 29.08.2024 and the APEDA imposed penalty of Rs. 10 Lakhs on M/s. Elite Agro specialities.

31. I find that the exporter vide letter dated 08.10.2024 has admitted that their consignment was of conventional Rice, owing to fumigation done on goods loaded in the vessel. On the basis of above evidences, it is established that the cargo of "Non-Basmati white rice" is mis-declared by the exporter in the Shipping Bills as "Organic Non-Basmati Rice (white rice)".

32. Further, it is pertinent to note that the exporter when filed shipping bill had a valid Provisional certificate from APEDA/SSOCA. However, their admission of the fact, vide their letter dated 08.10.2024, that the export goods shipped on board were conventional rice and not organic has rendered them liable for fine and penalty as discussed below.

CONFISCATION OF GOODS-

33. I find that the exporter has indulged in mis-declaration of goods by declaring Non-Basmati white rice as Organic Non-Basmati Rice (white rice)" rendering their goods liable to confiscation under the provisions of Section 113(d) of the Customs Act, 1962, which is reproduced herein below:-

"113. Confiscation of goods attempted to be improperly exported, etc.

- The following export goods shall be liable to confiscation:-

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

In this regard, I also rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai), upheld in Apex court in 2003 (ELT A309 (SC), wherein it is held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not.

In view of the above, I hold that the 16700 MT cargo valued at Rs. 64.76 Cr. covered under 65 Shipping Bills (as detailed in the attached Annexure-C) pertaining to M/s. Elite Agro Specialities is liable for confiscation under section 113 (d) of the Customs Act, 1962.

34. I further find that the case laws referred by the noticee in their submission are not applicable in the instant case as the facts and circumstances are distinguishable.

REDEMPTION FINE-

35. Considering the heavy detention and demurrage charges, amounting to USD 20,000 (Rs. 17,00,000/- approx.) per day per vessel incurred, as claimed by the exporter, and the facts of the case that the certification granted by APEDA was valid on the day of filing of shipping Bills and provisions of Section 125 of the Customs Act, I allow the goods to be exported on payment of redemption fine. However, considering the facts of the case, I will be taking a lenient view while imposing redemption fine.

PENALTY UNDER SECTION 114(i)

36. As regards the penalty under Section 114(i) of the Customs Act, 1962, I find that the exporter has mis-declared the goods rendering the goods liable for confiscation which has rendered them liable for penal action under Section 114(i) of the Customs Act, 1962. The relevant extract of the Section 114(i) of the Customs Act, 1962 is reproduced herein below-

“114. Penalty for attempt to export goods improperly, etc.- Any person 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 113, 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 three times the value of the goods as declared by the exporter or the value as determined under this Act]”

37. Further as regards the request of the exporter vide letter dated 08.10.2024 to allow them file new shipping bills for the purpose of export of the subject goods and sail, the same is beyond the scope of instant show cause notice and the same can be dealt by the competent authority. Further, it is on record that the vessel MV South Wind-I is under arrest as per the order dated 04.10.2024 of the Hon'ble High Court of Gujarat.

38. In view of the above discussion and findings, I hereby pass the following order-

- i. I order to confiscate 16700 MT cargo valued at Rs. 64.76 Cr. covered under 65 Shipping Bills (as detailed in the attached Annexure-C) under section 113 (d) of the Customs Act, 1962.

However, I give M/s Elite Agro specialities an option to pay fine of Rs. 65,00,000/- (Rupees Sixty Five lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

ii. I impose penalty of Rs. 30,00,000/- (Rupees Thirty lakhs only) upon M/s Elite agro specialities under Section 114 (i) of the Customs Act, 1962.

39. This order is issued without prejudice to any other action that may be taken against the exporters or any other person under the Customs Act, 1962 or any other law for the time being in force.

Vishwajeet Singh
12.10.2024
(Vishwajeet Singh)

Additional Commissioner
Custom House Kandla

F.No. GEN/ADJ/ADC/2083/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20241071ML000000E5A2

To,

M/s Elite Agro Specialities (IEC-1098004264) 14/19,
SIDCO Ind. Estate, PO-Peringandoor, Thrissur-680581

Copy To-

1. The Deputy/Assistant Commissioner (SIIIB/EDI/TRC/Review), Customs House, Kandla for information and necessary action please.
2. Guard File.