

		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271423/271426
A. File No.	:	CUS/ASS/MISC/174/2024-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/270/2024-25 dated 28-01-2025
C. Passed by	:	Mukesh Kumari, Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	:	28-01-2025 / 30-01-2025
E. Show Cause Notice No. & Date	:	SCN dated 20.06.2024
F. Noticee(s)/Party/ Exporter	:	M/s Rudram Inc., C-3/19, Ashok Vihar, Phase-2, New Delhi-110052.
G. DIN	:	20250171MO000091439D

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- 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 रोड़, 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.”**

- 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.
- 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 –

- उक्त अपील की एक प्रति और A copy of the appeal, and
- इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 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 अन्य के ,अधिनियम शुल्क सीमा और 1982,अपील) नियम)। चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी

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:

Whereas it appears that M/s. Rudram Inc., C-3/19, Ashok Vihar, Phase-2, New Delhi-110052, having IEC-ABBFR6878F, has filed Shipping Bill No. 6578719 dated 06.01.2024 through their CHA-M/s World Wind Shipping Services for export of goods declared as “Indian Parboiled Rice” classified under CTH-10063010.

2. As per Board Instruction No.29/2022-Customs dated 28.10.2022, representative sample was drawn and sent to CRCL Kandla vide Test Memo 56 dated 17.01.2024 and the cargo was allowed for export on provisional basis on submission of Test Bond No. 3738 dated 13.01.2024 submitted by the Exporter having conditions that in the event of failure of cargo in the Test Report, the Exporter will pay the duty along with interest, fine and/or penalty, if any imposed for contravention of the Customs Act, 1962 and other allied Acts. The above Bond was accepted by the Deputy Commissioner (Export), Customs House, Mundra.

3. CRCL, Kandla vide Test Report No.10666 dated 31.01.2024 submitted their report as under:

Sr.No.	Shipping Bill No. & Date	Net Wt.	FOB Declared in SB (in Rs.)	Summary of Test Result
1.	6578719 dated 06.01.2024	260 MTs	87,94,500/-	Parboiled Rice (Broken 68.62%)

4. The copy of the said Test Report was provided to the Exporter, viz., M/s. Rudram Inc. through CHA-M/s World Wind Shipping Services vide acknowledgement dated 08.02.2024 for their information with a specific request to submit their submission within 10 days of the communication as to why the proceedings should not be initiated under Customs Act, 1962 as the instant case were seen fallen under the purview of mis-declaration of the Export cargo.

5. Therefore, the exporter vide letter dated 19.02.2024 made a request for re-testing of the sample which was accepted by the competent authority and sample was sent for re-testing to CRCL, New Delhi. CRCL, New Delhi submitted the Test Report No.197 dated 21.03.2024 as under:-

Sr. No.	Shipping Bill No. & Date	Net Wt.	FOB Declared in SB (in Rs.)	Summary of Test Result
1.	6578719 dated 06.01.2024	260 MTs	87,94,500/-	Parboiled Rice (Broken 62.25%)

6. With reference to above mentioned Shipping Bill, the Exporter has declared the goods as “*Indian Parboiled Rice*” and classified the same under *CTH-10063010*. However, on pursuant to the outcome of the Test Results, the consignment is found to be “Parboiled Rice having broken percentage of Broken 68.62% as per First Test Report and broken percentage of 62.25% as per Second Test Report”. Whereas, the maximum limit of broken rice to be exported is 25%. Therefore, as the percentage of Broken Rice has been exceeded 25%, the export consignment which has been already exported is to be considered as **Broken Rice** and correctly classifiable under **CTH-10064000**.

7 . As per **Notification No.31/2015-2020-Customs dated 08.09.2022**, the export of Broken Rice under CTH-10064000 is prohibited **w.e.f. 09.09.2022**. The relevant portion of above notification is re-produced as under:-

The Central Government, in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby amends the Export Policy of broken rice against ITC (HS) code 1006 40 00 of Chapter 10 of Schedule 2 of the ITC (HS) Export Policy, as under:-

ITC HS Code	Description	Export Policy	Revised Export Policy
10064000	Only for broken rice	Free	Prohibited

8. Whereas, the Exporter under a Test Bond No. 3738 dated 13.01.2024 has bound themselves to the effect that in the event of failure of cargo in the Test Report, the Exporter will pay the duty along with interest, fine and/or penalty, if any imposed for contravention of the Customs Act, 1962 and other allied Acts. And on the basis of Customs Bond submitted by the Exporter, the goods have been allowed for ultimate export provisionally.

9. In view of above, the above impugned goods i.e. 260 MTs of Broken Rice having FOB Value of **Rs.87,94,500/-** entered for export vide Shipping Bill No. 6578719 dated 06.01.2024, which have been exported are mis-declared and mis-classified and therefore liable for confiscation under Section 113(d) and 113(i) of Customs Act, 1962.

10. Further, the Exporter have failed to declare correct description and correct classification of the impugned goods exported vide Shipping Bill No. 6578719 dated 06.01.2024. It appears that the Exporter has resorted to mis-classification and mis-

declaration of the impugned exported goods in order to circumvent policy restriction/prohibition on the impugned cargo. Thus, the Exporter has contravened the provisions of the Section 50 of the Customs Act, 1962. Therefore, for the acts and omission on the part of the exporter, the exporter is also liable for penalty under Section 114(i) of Customs Act, 1962 and for contravention of Section 50 of the Customs Act, 1962 liable for penalty under Section 117 of Customs Act, 1962.

Legal Provisions:

11. 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:

11.1. Section 2(33) in the Customs Act, 1962

Section 2:

(1)

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(33) “prohibited goods” means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;

11.2. Section 50. Entry of goods for exportation. –

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section 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.”.*

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11.3. 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:.

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

The following export goods shall be liable to confiscation:—

a.

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(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;

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(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77;

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11.5. 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 5 [not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, 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 any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

11.6. 117. Penalties for contravention, etc., not expressly mentioned.—

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it

was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

12. Therefore, the exporter, M/s Rudram Inc., C-3/19, Ashok Vihar, Phase-2, New Delhi-11005209 holding IEC-0508018463, was called upon to show cause within 30 days to the Additional Commissioner of Customs (Export), Customs House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:

- i. The classification of the goods declared by the Exporter under Shipping Bill No. 6578719 dated 06.01.2024 as “Parboiled Rice” under CTH-10063010 should not be rejected and re-classified as “Broken Rice” under CTH-10064000;
- ii. The goods covered under Shipping Bill No. 6578719 dated 06.01.2024 having FOB value of Rs.87,84,500/- (Eighty Seven Lakh Eighty Four thousand Five Hundred Rupees Only) should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962 ;
- iii. Penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter;
- iv. Penalty under Section 117 of the Customs Act, 1962 should not be imposed upon the Exporter;

12.1 Further, a corrigendum dated 21.01.2025 to the Show Cause Notice dated 20.06.2024 was issued by the adjudicating authority regarding correction in Para 12 (ii) and same is reproduced below:

“In the said SCN dated 20.06.2024, the FOB value of the goods mentioned in Para 12(ii) as Rs.87,84,500/- (Eighty Seven Lakh Eighty Four thousand Five Hundred Rupees Only) may be read as Rs.87,94,500/- (Eighty Seven Lakh Ninety Four Thousand Five Hundred Rupees Only)”.

SUBMISSION OF THE NOTICEES AGAINST THE INSTANT SCN:

13. I find that on behalf of the noticee i.e. M/s Rudram Inc. (IEC-0508018463), Law Firm M/s Jain Globus vide letter dated 20.08.2024 submitted reply in respect of SCN issued Vide F. No. CUS/ASS/MISC/174/2024-EA dated 20.06.2024 and mentioned as under:

Under instructions and on behalf of their client M/s Rudram Inc., represented through its Director/Proprietor Sh. Varun Goel, the present reply to the above referred show cause notice was being filed.

1. That their client is involved in the business of trading and exporting of goods namely rice. In the current matter, the exporter filed the shipping bill no. 6578719 dated January 6, 2024, for exporting goods declared as Indian Parboiled Rice under CTH 10063010, with a net weight of 260 MT and an FOB value of Rs.87,94,500 at Mundra Port.

2. That the goods were provisionally allowed for export while awaiting the test results of samples sent to CRCL by the customs authority at Mundra port as per the compliance of Board Instruction no. 29/2022-Customs dt. 28.10.2022.

3. Upon testing, CRCL Kandla forwarded the test results indicating that the goods were parboiled rice with 68.62% broken grains vide test report dt. 31.1.2024. Based on this result, the customs authority initiated action and sought clarification from their client regarding the percentage of broken grains.

4. Their client had also got the sample of goods tested from COTENA and filed the test report dt. 17.2.2024 issued by COTECNA Inspection India Pvt. Ltd. regarding the percentage of broken grain in the said consignment and as per the said test report the percentage of broken rice was found to be 3.79 %. However, the customs did not pay any heed to the said test report.

5. Consequently their client requested a re-test of the goods from CRCL New Delhi via a letter dated February 19, 2024. The sample was retested at CRCL New Delhi, and the test report no. 197 dated March 21, 2024, showed the result as "Parboiled rice (broken 62.25%)".

6. The customs authority contended that, according to the first and second test reports, the percentage of broken rice was 68.62% and 62.25%, respectively. Since the broken rice percentage exceeded 25%, the goods were classified as Broken Rice under CTH 10064000 and according to notification no. 31/2015-2020 Customs dated September 8, 2022, the export of broken rice under CTH 10064000 is prohibited effective September 9, 2022.

7. That even a request was made by the noticee vide letter dated 4.5.2024 seeking the permission for back to town of the subject goods, however no response was ever received by the noticee qua the said request.

8. For these reasons, the customs authority issued the present show cause notice proposing the following actions:

- i. The classification of the goods declared by the Exporter under Shipping Bill no. 6578719 dt. 6.1.2024 as Parboiled rice under CTH 10063010 should not be rejected and reclassified as Broken Rice under CTH 10064000;
- ii. The goods covered under shipping bill no. 6578719 dt. 6.1.2024 having FOB value of Rs.87,84,500/- should not be confiscated under section 113 (d) and 113 (i) of the customs act 1962;
- iii. Penalty under section 114 (i) of the customs act should not be imposed upon the exporter;
- iv. Penalty under section 117 of the customs act should not be imposed upon the exporter;

9. At the outset it was submitted that the show cause notice was issued based on wrong assumption that the goods had already been exported as mentioned in para no. 6 of SCN. Therefore, as the percentage of broken rice had exceeded 25%, the export consignment which had already been exported was to be considered as Broken Rice classifiable under CTH-10064000". In fact the goods were still lying at the port.

10. Though the Let Export was allowed by the customs authority after the submission of bond and after completion of other formalities by their client, however the goods were never exported as their client was pursuing their legal remedies with regard to the goods in question and the goods were lying in the CFS and the customs authority were aware about the same.

11. With regard to the classification of goods being proposed from i.e. CTH 10064000 (only for broken rice) prohibited for export, it was submitted that the same was not applicable to the goods in question i.e. Parboiled Rice, which is rightly classifiable under CTH 10063010. The issue was raised on account of percentage of broken rice found in the sample of goods which in the first report was 68.62% and which further came down to 62.25% as given by the CRCL.

12. Though their client dispute such percentage of broken rice as found in the test reports and it appeared that the said testing laboratories were following an incorrect method of testing due to which such report of high percentage of broken rice was reported in the test reports.

13. That in order to get the correct picture with regard to the actual percentage of broken rice their client had got the sample of the goods tested from the world renowned company namely SGS and the said company after testing the sample collected from the rice bags at Transworld CFS Mundra on 16.7.2024 gave a report dated 26.7.2024 and as per the said the report the percentage of broken rice was found to be 3.65%.

14. That for ready reference all test reports results relating to percentage of broken rice found was given in tabulated form below

CRCL Kandla Test Report dated	COTECNA Test Report dated	CRCL Delhi Test Report dated	SGS India Pvt. Ltd. Test Report dated
31.01.2024	17.02.2024	21.03.2024	26.07.2024
68.62 %	3.79 %	62.25 %	3.68 %

15. Hence, it was very much clear that the testing agencies which had given the result in the range of 68.62% and 62.25% were clearly giving erroneous report and probably their method of testing was not up-to-date and for the said reasons only high percentage of broken rice were reported.

16. Further even otherwise it was submitted that though in the show cause notice it was mentioned that the maximum limit of broken rice to be exported is 25% however, there was nothing mentioned as to under which provision such parameter is prescribed to be applicable to the export of goods i.e. parboiled rice.

17. The test report being relied upon by the customs as was given by the Govt. agencies namely CRCL and the said agency was basing their report on the parameter of broken kernel as per the Ministry of Consumer Affairs, Food & Public

Distribution, Department of Food & Public Distribution no. 8-4/2020-S & I dated 28.9.2020 Krishi Bhawan, New Delhi.

18. It is relevant to state here that such adoption of parameter given by the Ministry of Consumer Affairs had nowhere been mentioned under the Customs Act or by the DGFT to be considered as base parameter and hence the testing parameter of the CRCL was itself not correct and hence could not be relied upon. Further, the said Ministry nowhere mentioned that the said parameter wherein maximum limit was prescribed was for the purpose of goods which were entered in the customs area for export / import also. In fact the said criteria was for the purpose of specification of paddy, rice and coarse grains for Khariff Marketing seasons for central pool procurement and in absence of any notification / circular / trade notice by the DGFT/Customs same was not applicable for the export goods.

19. That, in fact there was no clarity about the percentage of broken rice in a consignment which can term the same as broken rice. It was relevant to mention that the DGFT in Trade notice no. 17/2022-23 dt. 28.9.2022 regarding implementation of notification no. 31/2015-20 dt. 8.9.2022 regarding export of broken rice had issued clarification as under Implementation of Notification No. 31/2015-20 dated 08.09.2022 regarding Export of Broken Rice.

Reference is invited to the DGFT Notification No. 31/2015-20 dated 08.09.2022 wherein export of broken rice have been placed under 'Prohibited' category.

2. Subsequently, representations have been received from trade and industry inviting attention to the problems being faced by exporters in clearing the consignments of other categories of rice due to presence of certain content of "Broken Rice" in the said consignments.

3. Considering the hardships faced by the trade community and in order to facilitate exports, it is clarified that wherever difficulty is being faced, the limit of tolerance of "Broken Rice" in consignments of Rice for export may be allowed in terms of "The Rice Grading and Marketing Rules, 1939.

20. So vide the said trade notice the Govt. was invoking the 1939 Rules however, that also created problem in the trade of export of goods as there was different tolerance level of broken rice for different varieties of rice. However, within a week's time a fresh trade notice no. 18/2022-23 dt. 4.10.2022 was issued by the DGFT in suppression of earlier trade notice dated 28.9.2022. Further, it was stated therein that "it is clarified in respect of normal rice that "Rice (5% and 25%) is already exempted as it is not broken rice but normal rice with the permissible limits of broken rice as per standards."

21. That however, no expression as 'normal rice' was found either in the trade or in different standards applicable for rice. There was no specification prescribed by the DGFT as to what percentage of broken rice can term the entire consignment as broken rice.

22. In view of the above it was submitted that the subject goods could not be termed as broken rice and hence were outside the scope of prohibition on the strength of notification no. 31/2015-2020 Customs dated September 8, 2022.

23. That the declaration made by the noticee was true and correct and the goods were in fact parboiled rice and not prohibited goods, hence the same were not liable for confiscation as proposed under section 113 (d) and 113 (1) of Customs Act, 1962.

24. That the proposal of penalty u/s 114 (1) of Custom Act. 1962 had no applicability in the present facts and circumstances of the case as the goods were not prohibited goods.

25. That section 117 of the Customs Act, 1962 had no applicability in the present facts and circumstances of the case.

26. At the cost of repetition it was submitted that the noticee had made true and correct declaration qua the goods sought to be exported and there was no malafide intention on the part of the noticee and the goods were in fact parboiled rice and the percentage of broken rice was not more than 4% and hence the goods were not prohibited goods.

In view of above it was prayed that the present SCN be dropped unconditionally and the goods be permitted to be exported forthwith. Before passing any order the noticee might be provided opportunity of personal hearing. Noticee reserved its right to add, amend, any or all submission made and to file further submission in case the need no arise.

Further, the exporter M/s Rudram Inc. vide letter dated 25.09.2024 requested for fresh re-testing of the goods.

RECORDS OF PERSONAL HEARING:

14. Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order, Therefore, Exporter was given first personal hearing on 13.11.2024 at 4:00 PM, wherein the exporter didn't attend the PH. However, an email from the Law Firm M/s Jain Globus was received and the advocate stated as under:

They had already filed their reply on behalf of noticee M/s Rudram Inc. The entire issue in the present matter related to the classification of the goods on the strength of the rice which was sought to be exported by the noticee and the sample of the which was got tested from CRCL twice i.e. one from the Mundra and further by CRCL Delhi and there was a change in the test result of the same.

Hence the noticee sought the cross examination of the CRCL test examiner at Delhi who conducted the test qua the noticee's goods sample and gave report dated 21.3.2024 (as found mentioned in the above SCN and also mentioned in their reply to SCN).

The cross examination was relevant and important for better adjudication of the case as in fact the noticee had also got the test of the sample of goods and the result was completely different and within the allowed parameters and as the entire issue related to percentage of broken rice it was very much in the interest of justice that the cross examination be allowed.

Hence, second opportunity was granted to the exporter for PH on 11.12.2024 at 03:30, wherein the exporter vide email dated 10.12.2024 sated that their representative

from Sai Shipping Services Pvt. Ltd. will attend the PH tomorrow, however, neither exporter nor his representative, attended the PH. Accordingly, final opportunity for PH was given to the exporter on 07.01.2025 at 03:30 pm, wherein the exporter didn't attend the PH.

DISCUSSION AND FINDINGS:

15. I have carefully gone through the Show Cause Notice F. No. CUS/ASS/MISC/174/2024-EA dated 20.06.2024 issued by Additional Commissioner of Customs, Custom House Mundra and Corrigendum dated 21.01.2025, relied upon documents, legal provisions and the records available before me, the main issues involved in the case are to be decided in the present adjudication are as below whether:

- i. The classification of the goods declared by the Exporter under Shipping Bill No. 6578719 dated 06.01.2024 as "Parboiled Rice" under CTH-10063010 should not be rejected and re-classified as "Broken Rice" under CTH-10064000;
- ii. The goods covered under Shipping Bill No. 6578719 dated 06.01.2024 having FOB value of Rs.87,94,500/- (Eighty Seven Lakh Ninety Four thousand Five Hundred Rupees Only) should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962 ;
- iii. Penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter;
- iv. Penalty under Section 117 of the Customs Act, 1962 should not be imposed upon the Exporter;

Now, I proceed to decide the case issue-wise.

15.1. I observe that on behalf of the noticee i.e. M/s Rudram Inc. (IEC-0508018463), Law Firm M/s Jain Globus vide letter dated 20.08.2024 submit reply in respect of SCN issued Vide F. No. CUS/ASS/MISC/174/2024-EA dated 20.06.2024. I observed the reply and points raised by the Law firm M/s Jain Globus on behalf of the noticee.

15.2. I observe that the Exporter was given opportunity of 3 Personal Hearings. However, the exporter didn't attend any of the Personal Hearings. An email from the Law Firm M/s Jain Globus was received and same was observed by me.

15.3. I find that the request for retesting was rejected by the competent authority as the goods are already re-tested by renowned Govt. lab CRCL, Delhi. I also find that as per both test reports received from CRCL, Kandla and CRCL, New Delhi the percentage of Broken Grains is far beyond the prescribed limit by DGFT. Almost more than 60% of the Broken Grains found in the goods as per both test reports.

15.4. I find that and also submitted by the exporter that the impugned goods are still lying in CFS after granting of LEO on submission of BOND by the exporter. Further, as per both test reports received from CRCL, Kandla and Delhi it clearly appears that the percentage of the Broken Grains is far beyond the prescribed limit by DGFT. Thus, the exporter tried to export the impugned goods by the way of misclassification and misdeclaration under CTH 10063010 as Parboiled Rice. Further, the goods are prohibited in nature as per both test reports so same are liable for confiscation under Section 113 as the exporter tried to export

the prohibited goods.

15.5. I find that the Exporter has declared the goods as “Indian Parboiled Rice” and classified the same under CTH-10063010. However, on pursuant to the outcome of the Test Results from CRCL, Kandla, the consignment is found to be “Parboiled Rice having broken percentage of Broken 68.62%” and as per Test Report, CRCL, Delhi the consignment is found to be “Parboiled Rice having broken percentage of Broken 62.25%”. Whereas, the maximum limit of broken rice to be exported is 25%. Therefore, as the percentage of Broken Rice has been exceeded 25%, the export consignment which has been to be exported is to be considered as Broken Rice classifiable under CTH-10064000.

15.6. I find that as per **Notification No.31/2015-2020-Customs dated 08.09.2022**, the export of Broken Rice under CTH-10064000 is prohibited **w.e.f. 09.09.2022**. The relevant portion of above notification is re-produced as under:-

The Central Government, in exercise of powers conferred by Section 3 read with section 5 of the Foreign Trade (Development & Regulation) Act, 1992 (No. 22 of 1992), as amended, read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-20, hereby amends the Export Policy of broken rice against ITC (HS) code 1006 40 00 of Chapter 10 of Schedule 2 of the ITC (HS) Export Policy, as under:-

<i>ITC HS Code</i>	<i>Description</i>	<i>Export Policy</i>	<i>Revised Export Policy</i>
<i>10064000</i>	<i>Only for broken rice</i>	<i>Free</i>	<i>Prohibited</i>

2. The Notification will come into effect from 9th of September, 2022. The provisions as under Para 1.05 of the Foreign Trade Policy, 2015-2020 regarding transitional arrangement shall not be applicable under this Notification for export of broken rice under HS code 1006 40 00. During the period from 9th September, 2022 till 15th September, 2022 the following consignments of broken rice will be allowed to be exported:

- i. where loading of broken rice on the ship has commenced before this Notification;
- ii. where the shipping bill is filed and vessels have already berthed or arrived and anchored in Indian ports and their rotation number has been allocated before this Notification; The approval of loading in such vessels will be issued only after confirmation by the concerned Port Authorities regarding anchoring/berthing of the ship for loading of broken rice prior to the Notification; and
- iii. where broken rice consignment has been handed over to the Customs before this Notification and is registered in their system.

Further, from above it clearly appears that the goods which arrived or handed over to the customs before 09.09.2022 are allowed for export till 15.09.2022. The goods which are arrived or handed over to the Customs after 08.09.2022 are prohibited and same are liable for confiscation under Section 113 of the Customs act, 1962.

15.7 I find that on pursuance to issuance of above Notification No.31/2015-2020-Customs dated 08.09.2022, DGFT issued Trade Notice No.17/2022-23 dated 28.09.2022 which is

reproduced as under:

Subject: Implementation of Notification No.31/2015-20 dated 08.09.2022 regarding Export of Broken Rice

Reference is invited to the DGFT Notification No.31/2015-20 dated 08.09.2022 wherein export of broken rice have been placed under 'Prohibited' category.

2. *Subsequently, representations have been received from trade and industry inviting attention to the problems being faced by exporters in clearing the consignments of other categories of rice due to presence of certain content of "Broken Rice" in the said consignments.*

3. *Considering the hardships faced by the trade community and in order to facilitate exports, it is clarified that wherever difficulty is being faced, the limit of tolerance of "Broken Rice" in consignments of Rice for export may be allowed in terms of "The Rice Grading and Marketing Rules, 1939".*

15.8. I find that in continuation to above, Trade Notice dated 28.09.2022, DGFT issued Trade Notice No.18/2022-23 dated 04.10.2022 in suppression of the above Trade Notice No.17/2022-13 dated 28.09.2022 which is reproduced as under:

Subject: Issues related to Export Policy of Rice.

Reference is invited to Notification No.31/2015-2020 dated 8th September, 2022 amending the export policy of Broken Rice under HS code 10064000 under Chapter 10 of Schedule - 2 of the ITC (HS) Export Policy from 'Free' to 'Prohibited' with immediate effect read with Trade Notices No.17/2022-2023 dated 28th September, 2022.

Subsequently, representations have been received regarding Rice (5% and 25%) where irrevocable letter of credit has been issued before 8th September, 2022 is also being stopped at the ports.

Accordingly, in supersession of Trade Notice No.17/2022-23 dated 28.09.2022, it is clarified in respect of normal rice that "Rice (5% and 25%) is already exempted as it is not broken rice but normal rice with permissible limits of broken rice as per standards. However, it will carry 20% duty as per notification"

15.9. I find that on conjoined reading of the above Notification No.31/2015-2020-Customs dated 08.09.2022 and Trade Notice No.17/2022-13 dated 28.09.2022 and Trade Notice No.18/2022-23 dated 04.10.2022, it appears that the limit of tolerance of "Broken Rice" in consignments of Rice for export in respect of normal rice that "Rice (5% and 25%) is already exempted as it is not broken rice but normal rice with permissible limits of broken rice as per standards. However, in the instant cases the prescribed tolerance limit of the Broken Rice has crossed the benchmark fixed by the DGFT which is a policy maker in respect of export from India.

Further, as per The Rice Grading and Marketing Rules, 1939 the maximum percentage allowed for Broken Rice in all type of parboiled rice is below 25%. The DGFT vide Trade Notice No.18/2022-23 dated 04.10.2022 also clarify that the rice with Broken Rice percentage (5% and 25%) is normal rice. Thus, the maximum limit for Broken Grains in Normal rice is 25%. But in instant case the limit is far beyond the tolerance limit as per both test report.

15.10. I find that the Exporter has failed to declare correct description and correct classification of the impugned goods exported vide Shipping Bill No. 6578719 dated 06.01.2024. It appears that the Exporter has resorted to mis-classification and mis-declaration of the impugned exported goods in order to circumvent policy restriction/prohibition on the impugned cargo. Thus, the Exporter has contravened the provisions of the Section 50 of the Customs Act, 1962. Therefore, for the acts and omission on the part of the exporter, the goods are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962 and the exporter is also liable for penalty under Section 114(i) of Customs Act, 1962.

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

The following export goods shall be liable to confiscation as per:

(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;

....

- i. any goods entered for exportation which do not correspond in respect of value or any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.

I find that Section 114 of the Customs Act, 1962 stipulates that:

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 ¹[²not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, 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 any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

15.11. In view of the above it clearly appears that the Exporter has declared the goods as “Indian Parboiled Rice” and classified the same under CTH-10063010. However, on pursuant to the outcome of the Test Results from CRCL, Kandla, and Delhi, the Broken grains percentage was found far beyond the prescribed limit set by DGFT vide Trade Notice No.18/2022-23 dated 04.10.2022. Thus the exporter has mis-declared the goods as Indian Parboiled Rice under CTH 10063010 instead of Broken Rice under CTH 10064000. Therefore, for the acts and omission on the part of the exporter, the goods are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962 and the exporter is also liable for penalty under Section 114(i) of Customs Act, 1962.

16. In view of the Reply received from Exporter, Record of Personal Hearing, forgoing discussions and findings, I pass the following order:

ORDER

- i. I order to reject the description as well as classification of the goods to be exported vide Shipping Bill No. 6578719 dated 06.01.2024 i.e. “PARBOILED RICE” under CTH-10063010 and order to be re-classified as “Broken Rice” under CTH-10064000;
- ii. I order to confiscate the Impugned goods covered under Shipping Bill No. 6578719 dated 06.01.2024 having FOB value 87,94,500/- under Section 113(d) & 113(i) of the Customs Act, 1962. However, I give the option to the exporter to redeem the same for Back to Town only on a Redemption Fine of Rs/- 10,00,000/- (Rupees Ten Lakhs only) under Section 125 of the Customs Act, 1962;
- iii. I order to impose and recover Penalty of Rs 5,00,000/- (Rupees Five Lakhs Only) on the exporter under Section 114(i) of the Customs Act, 1962.
- iv. I refrain myself to impose Penalty on the exporter under Section 117 of the Customs Act, 1962.

17. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the 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.

MUKESH KUMARI
ADDITIONAL COMMISSIONER
ADC/JC-I-O/o Pr Commissioner-Customs-Mundra

F. No. CUS/ASS/MISC/174/2024-EA

Date : 30-01-2025

BY SPEED POST

To,
M/s Rudram Inc.,
C-3/19, Ashok Vihar, Phase-2,
New Delhi-110052.

Copy to:

1. The Deputy/Assistant Commissioner, TRC/RRA/EDI Custom House Mundra, for undertaking necessary action.
2. Guard File.