	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, **CUSTOM HOUSE: MUNDRA, KUTCH** **MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421** **Phone No.02838-271423/271426** **E-mail: exportasses-mundra@gov.in**

A. File No.	:	CUS/ASS/MISC/798/2023-EA-O/oPr-Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/AKM/367/2026-27
C. Passed by	:	Amit Kumar Mishra, Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order	:	30.09.2026
E. Date of issue	:	08.10.2026
F. Show Cause Notice No. & Date	:	SCN No. CUS/ASS/MISC/798/2023-EA dated 08.10.2024
G. Noticee(s) / Party / Exporter	:	M/s R V Exports Pvt. Ltd, A18 Nityanand Nagar A, Queens Road Vaishali Nagar, Jaipur, Rajasthan-302021.
H. DIN	:	20260971MO00005A2E96

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा128 A के अंतर्गत प्रपत्र सीए- 1 -में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

सीमा शुल्क आयुक्त (अपील), चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड, नवरंगपुरा,अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS), HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD, NAVRANGPURA, AHMEDABAD-380 009."

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

(i) उक्त अपील की एक प्रति और A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची- 1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं°-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क

टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटि/ 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 के ,अधिनियम शुल्क सीमा और 1982,अपील) नियम) । चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी अन्य

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 appeared that M/s R V Exports Pvt. Ltd, A18 Nityanand Nagar A, Queens Road Vaishali Nagar, Jaipur, Rajasthan-302021, (hereinafter referred to as the noticee/exporter) having IEC No. AAKCR1411K, had filed Shipping Bill No. 2569600 dated 19.07.2023 through their CHA-M/s C Jivram Joshi & Sons (Guj) for export of goods declared as "Indian Parboiled Rice (Non-Basmati)" and classified the goods under CTH-10063010.

2. As per Board Instruction No.29/2022-Customs dated 28.10.2022, representative sample were drawn and sent to CRCL, Kandla vide Test Memo and the cargo has been allowed for export on provisional basis on submission of Test Bond submitted by the Exporter which were accepted by the Deputy Commissioner (Export), Customs House, Mundra.

3. Respective Test Report was received against the Test Memo wherein it was mentioned that *"Based on the physical appearance, forms and analytical findings, it may be considered as Parboiled Rice (with BROKEN RICE %, as mentioned in below table),* against the declared export cargo "**Indian Parboiled Rice**". The details of Shipping Bill and corresponding Test Report are as under:

Table-I

Sr. No.	Shipping Bill No. & Date	Net Wt.	Test Report No. & Date	FOB Declared in SB (in Rs.)	Summary of Test Result
1.	2569600 dated 19.07.2023	132.5 MTs	4575 dated 16.08.2023	44,02,518	Parboiled Rice with Broken Rice 32.84%
TOTAL				44,02,518	

4. A copy of the above said Test Report was provided to the exporter and CB vide letter dated 04.12.2023, 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. Exporter vide letter dated 11.12.2023 submitted that he was disagreed from the Test Report and requested for re-testing of samples as per Circular No. 30/2017-Cus dated 18.07.2017. The request of exporter accepted by competent authority and samples forwarded to CRCL Delhi for re-testing of goods.

6. Respective Re-Test Report was received against the Test Memo wherein it is mentioned that *"The Goods are Parboiled Rice (with BROKEN RICE %, as mentioned in below table),* against the declared export cargo "Indian Parboiled Rice". The details of Shipping Bill and corresponding Test Report are as under:

Table-II

Sr. No.	Shipping Bill No. & Date	Net Wt.	Test Report No. & Date	FOB Declared in SB (in Rs.)	Summary of Re-Test Result
1.	2569600 dated 19.07.2023	132.5 MTs	CLR-26 dated 12.06.2024	44,02,518	Parboiled Rice with Broken Rice 28.00%
TOTAL				44,02,518	

A copy of the above said Test Report was provided to the authorized representative of exporter and same was acknowledged by authorized representative.

7. With reference to Sr. No.1 in the Table-II above at Para-6, the Exporter has classified the goods as "Indian Parboiled Rice" and classified under CTH-10063010 but pursuant to the outcome of the Re-Test Result, the consignment of the exported goods is found to be *"Broken Rice".*

7.1 As per Customs Tariff Act, 1975, CTH-10064000 covers Broken Rice. The relevant portion of the Customs Tariff is re-produced as under:

1006	***RICE***	
1006 10	*- Rice in the husk (paddy orrough):*	
1006 10 10	*--- Of seed quality*	*kg.*
1006 10 90	*--- Other*	*kg.*
1006 20 00	*- Husked (brown) rice*	*kg.*
1006 30	***- Semi-milled or wholly-milled rice, whether or not polished or glazed:***	
1006 30 10	*--- Rice, parboiled*	*kg.*
1006 30 20	*--- Basmati rice*	*kg.*
1006 30 90	*--- Other*	***kg.***
1006 40 00	***- Broken rice***	*kg.*

7.2 As per Customs Tariff, Broken Rice is classifiable under CTH-10064000 and therefore the goods already exported as per Sr. No.1 in the Table above at Para-3 is required to be classified under CTH-10064000 and to be confiscated being Prohibited Goods as per Notification No.31/2015-2020-

Customs dated 08.09.2022 issued by the Board. The relevant extracts of the said Notification is reproduced here-in-below:

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

7.3 As per Notification No.31/2015-2020-Customs dated 08.09.2022 issued by DGFT, 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 Codes	*Description*	*Export Policy*	*Revised Export Policy*
10064000	*Only for broken rice*	*Free*	*Prohibited*

7.4 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.

7.4.1 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.

7.4.2 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".

7.5 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 28 th 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 theports.

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"

7.6 On conjoined reading of the above Notification No.31/2015-2020-Customs dated 08.09.2022 and Trade Notice dated 28.09.2022 and 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.

7.7 In view of above discussion and provisions, it appeared that as the goods declared by the exporter exceeds the tolerance limit of Broken Rice, the same is liable to be classified as Broken Rice otherwise the purpose of making the tolerance policy for Broken Rice in normal rice shall have no meaning. It appears that General Rules for Interpretation of the Customs Tariff which stipulates the classification of the goods in Customs Tariff on the basis of constituent material having maximum percentage is not applicable in the present matter as this case is based on the conclusion where permissible limits have been exceeded the prescribed tolerance policy limit.

7.8 Whereas, the Exporter under the Customs Bond has bound them 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. Therefore, the exporter has mis-classified the goods under CTH-10063010 instead of 10064000 which make the goods liable for confiscation under Section 113(d) and 113(i) of Customs Act, 1962 and the same is reproduced here-in-below:

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.

7.9 Whereas, on account of export goods liable for confiscation which are ***Prohibited***, the Exporter has made themselves liable for penal action under Section 114 (i) of the Customs Act, 1962 and the same is reproduced here-in-below:

SECTION 114: Penalties 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, whichever is the greater;

8. Whereas, the Exporter appears to have failed to declare the correct classification of the export cargo in the Shipping Bill. It appears that the Exporter has resorted to mis-classification and mis-declaration of the export cargo in order to avoid Prohibition of Export Policy for the goods. Thus, the Exporter has contravened the provisions of the Section 50 of the Customs Act, 1962, which is re-produced here-in-below:

SECTION 50: Entry of goods for exportation - (1)…….

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.*
4. In view of above, the exporter, M/s R V Exports Pvt. Ltd, A18 Nityanand Nagar A, Queens Road Vaishali Nagar, Jaipur, Rajasthan-302021 was required to show cause in writing 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 as"Indian Parboiled Rice" classified under CTH-10063010 should not be rejected and to be re-classified as "Broken Rice" under CTH-10064000*;*

ii. The goods covered under Shipping Bill No. 2569600 dated 19.07.2023 having FOB value of **Rs.44,02,518/-** 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;

10. Defence reply submission:

I find that on behalf of the noticee i.e. M/s R V Exports Pvt. Ltd. (IEC-AAKCR1411K), Law Firm M/s Lakshmikumaran Sridharan attorneys 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 the same is mentioned as under:

Undisputed facts of the matter

1. The Noticee is a regular exporter of rice.
2. The consignment of goods exported by the Noticee fulfilled the quality parameters of the foreign party.
3. Both CRCL, Kandla and CRCL, New Delhi have tested the same representative sample drawn from the consignment of exported goods.
4. The test report of CRCL, Kandla and re-test report of CRCL, New Delhi has confirmed that the consignment of exported goods is parboiled rice.
5. The Broken Rice Percentage in the two test reports of CRCL Kandla and CRCL New Delhi are not consistent.
6. There is a year difference between the test report of CRCL Kandla and CRCL New Delhi.

A. **THE TEST REPORTS ARE INCONCLUSIVE AND CANNOT BE RELIED UPON. The test reports or the test memo do not specify how the sample for testing was drawn.**

B. 1. Test Memo No. 108, Test Report No. 4575 issued by CRCL, Kandla and the Re-Test Report No. 26-CUS/C-13/2024-25/2190 issued by CRCL, New Delhi provides that the sample was tested but is completely silent as to the method of sampling adopted for carrying out the inspection. Therefore, the possibility that the sample may have been drawn from a single bag for inspection, thereby leading to skewed results cannot be denied. Hence, it cannot be established as to whether the sample drawn by Customs is the representative sample for the consignment.

C. 2. Further, IS 4333 (Part 1) published by the Bureau of Indian Standards prescribed the method for determination of refractions in food grains. It *inter alia* provides for the method of preparation of test sample. The same has not been followed by Customs.

D. 3. It is a settled principle in law that when the test sample is drawn incorrectly or improperly and not as per standards, the consequent test report is not reliable.

E. 4. The Noticee relies on the case of **Jethanand Rohra and Ors v. Commissioner of Customs (Import), Nhava Sheva, 2022-VIL-412-CESTAT-MUM-CU,** wherein it has been held as follows:

"We also find that the test reports are vitiated and not reliable as sampling has been done improperly and not in conformity to the prescribed specifications. We further find that there is miscarriage of justice by denying the prayer for retest.

We further hold that in the facts of the present case there is no scope for applying preponderance of probability or the principle of probability, as there are explicit rules and or instructions laid down for classification. We also hold that the Test reports relied upon by Revenue are inconclusive.

40. In view of our findings we allow the appeals and set aside the impugned order. The goods under import are to be classified as per CTH heading claimed/declared by the appellant in the bills of entry. Accordingly, we hold that rejection of transaction value is also bad and thus, declared value has to be accepted. Redemption fine and penalties on the appellants are also set aside."

A. 5. Similar observations were made in the case of **Sachdeva & Sons, Amritsar Vs. Collector of Customs, Bombay 1987 (29) E.L.T. 917 (Tribunal).**

B. 6. Reliance here is placed on the decision in the matter of **Commissioner of Central Excise, Delhi v. Exportec India Exports - 2015 (323) ELT 131 (P&H)** wherein the Hon'ble High Court upheld the decision of the Hon'ble Tribunal, holding that non-adherence to the procedure for testing is a ground for rejection of test reports given by CRCL. This view was **maintained by Hon'ble Supreme Court** in **2015 (323) ELT A27 (SC).**

C. 7. Similar principle has been upheld in the case of **Rajkamal Industrial Pvt. Ltd. v. C.C.-Kandla 2021-VIL-485-CESTAT AHM**, Thus, it is abundantly clear that drawing of sample and testing should be as per the prescribed methodology and in absence of the same, the test reports cannot be relied upon.

D. 8. Hence, it is submitted that in absence of any observation on the method of drawing sample, the test reports cannot be relied upon.

In the Test Reports, the method or procedure carried out to identify the percentage of broken rice is not specified

A. 9. As submitted above, IS 4333 (Part 1) provides for the manner of testing food grains. The said standard prescribes the quantity of sample to be taken for determining the refraction and the order in which refractions should be separated from weighed sample.

B. 10. However, the Test Report issued by the CRCL, Kandla does not mention any such method adopted for checking the

broken rice component in the sample, and simply provides that the sample is composed of 32.84% broken grains, while noting that the same was done 'on the basis of ***physical appearance, forms and analytical findings"***.

C. 11. It is submitted that there is no literature which provides that the nature of rice can be determined simply on the basis of physical appearance and form. Further, it appears to be an impossible task to analyse the exact percentage of broken rice solely based on physical appearance. The Test Report is also silent as to what analysis has been carried out to draw the conclusion about the nature of the rice. In the absence of using any proper method for testing as per standards and without providing any method/ reasoning for arriving at such a finding, the CRCL Test Report is inconclusive.

D. 12. Similarly, The CRCL, New Delhi Re-Test Report fails to provide a detailed account of the methodologies employed in the analysis of the samples, instead opting to present the conclusions derived from the tests conducted without substantiating the processes undertaken.

E. 13. In this connection, the Noticee draws reference to**Circular 29/2022 – Cus (Instruction) dated 28.10.2022** which prescribes the procedure for identification of Parboiled rice varieties. At Para 3.1, the Circular clearly provides as follows: "*The Department of Food and Public Distribution (DFPD) has informed that there is no direct method, other than by testing, found in the literature, to identify Parboiled rice variety with certainty vis-a-vis other."* However, the Test Reports makes no mention of any test method found in the literature for making a conclusion as to the composition of the sample.

F. 14. In this regard, it is submitted that the Courts have established the position of law that where the test reports are vitiated the same are not reliable as the testing was not carried out in conformity with the prescribed specifications.

G. 15. In this connection, the relevant portion of the judgment in **Sachdeva & Sons, Amritsar Vs. Collector of Customs, Bombay 1987 (29) E.L.T. 917 (Tribunal)** referred to above is reproduced as follows:

"*In the certificate of the Bombay Agmark authorities relied on by the Additional Collector, the particulars regarding moisture, length, breadth, length breadth ratio, average length, average breadth were not given. The sample taken for analysis according to certificate is 20 gms. The total quantity sought to be exported was 3050 bags. They were in three lots. As has been seen earlier, the Agricultural Marketing Adviser had issued instructions as to how samples should be taken, the quantum of sample to be taken and according to the instructions, if the number of bags exceeds 1000 then 5% sample is required to be taken. I have already set out the details of the instructions in the preceding Paragraph. The Bombay Agmark authorities appears to have not followed the instructions……. Thus, a doubt is cast*

as to the test certificate issued by the Agmark authority, Bombay".

A. 16. The Hon'ble Apex Court in the case of **Bombay Oil Industries Pvt Ltd. Vs. UOI [1995 (77) ELT 32 (SC)]** held that when any Notification is silent on testing standards to be adopted, then ISI standard shall apply. Hence, IS 4333 (Part 1) should be followed for testing of the goods.

B. 17. Similarly, reliance in this regard can be placed on the judgement in the case of **Kenzo International Vs. Commissioner of C. Ex., Chandigarh-1 2017 (7) G.S.T.L. 325 (Tri. - Chan.)** wherein the Tribunal held that in the absence of definitive information regarding the methodologies employed in the sample testing, the test reports lack admissibility. The relevant extracts have been reproduced as under:

"In the test memo, we find that the samples were drawn for what purpose is not mentioned. The column at Serial No. 9 relating to the sample to be tested for was left blank, therefore, the samples are to be tested for what purpose is not known. Further, we find that as per the test report the following is test result.

> *"C No. 35/CRCL/2011-12/ct 2941 C.Ex (Int.)/Dt. 6-9-2011*
> *Report : The sample is in the form of used coloured powder, having Lead Oxide content. 75.04% by weight sealed remnant returned."*

The test result says that the samples in the form of Red Colour Powder having Lead Oxide content 75.04% by weight. We find that during the cross-examination it is stated by the examiner that the relevant literature has been consulted while testing. As from ISI specification, there is a procedure for testing which has been prescribed which was not followed as per test report placed before us.
As no details how the tests were conducted placed on record therefore, the test results are doubted and the same cannot be admissible"

A. 18. In the case of **Visalakshi Mills (P) Ltd. Vs. CCE, Mumbai [1998 (104) ELT 499 (Tribunal)]** the Tribunal held that testing has to be done as per IS Standards and merely because CRCL lab is not equipped to test as per such IS Standards it cannot follow any other method. On this basis the CRCL test report was held to be non-reliable.

B. 19. Also, reliance is placed on the decision of the Hon'ble Tribunal in the case of **Singhla Sales Corpn. Pvt. Ltd Vs. Com. of Cus. [2002 (141) E.L.T. 806 (Tri. - Del.)]** where it has been held that testing cannot be done merely on basis of physical appearance.

C. 20. This principle regarding the non-reliability of the reports wherein there are anomalies in the test report has also been upheld in the following case laws:

- **20 Microns Ltd. v. Commissioner of Customs (Import), Mumbai, 2019-TIOL-2941-CESTAT-MUM.**
- **Adani Wilmar Ltd. and Ors. v. Commissioner of Customs, 2008-TIOL-823-CESTAT-AHM**
- **CC(Prev), Kolkata v. Anutham Exim Private Limited, 2021-TIOL-85-CESTAT-KOL**

The CRCL, Kandla Test Report No. 4575 dated 16.8.23 is also contrary to the CRCL, New Delhi Re-Test Report No. 26-CUS/C-13/2024-25/2190 dated 12.6.2024 for the same consignment exported in Shipping Bill No. 2569600 dated 19.7.23

A. 21. For the shipping bill No. 2569600, samples were drawn and were sent to CRCL, Kandla for testing. As per the Test Report obtained from CRCL, Kandla, the broken rice percentage is 32.84%.

B. 22. Upon retesting of the same samples at the request of the Noticee, the CRCL, New Delhi determined that the percentage of broken rice was 28%. This represents a significant decrease of 4% compared to the previous test report issued by the CRCL, Kandla.

C. 23. The Noticee submits that it is impossible that for the same sample drawn from a single consignment of goods manufactured, packed, transported and exported by the same exporter to the same party, the quantity of broken rice is so different. It is also not the case that the variation in broken rice percentage in the two test reports is minute. Such vast difference in the test reports for the same sample further increases the doubt over the correctness of the test reports.

D. 24. Hence, it is submitted that the test reports issued for the same sample being contrary to each other, cannot be relied upon.

Retesting is required when the test reports are inconclusive

A. 25. From the above submissions, it can be infered that both the test report of CRCL, Kandla and re-test report of CRCL, New Delhi are inconclusive.

B. 26. It is a settled principle that when the initial test report is inconclusive or rather incorrect, then re-testing is to be resorted.

C. 27. In this regard, reliance is placed on the decision in case of **Kaipan Pan Masala Pvt. Ltd. v Commissioner of CGST, Ex. And Cus. Bhopal 2020 (372) E.L.T. 145 (Tri. - Del.)** wherein the Principal Bench of the CESTAT, New Delhi observed that when the initial test report is inconclusive, then the denial of request for re-testing of samples amounts to violation of the principles of natural justice.

D. 28. Hence, for the reasons mentioned above, it is submitted that retesting of the sample must be done so as to infer the correct nature of the product exported. Without such re-testing, no proceedings as proposed in the Impugned SCN can

be initiated.

Re-testing is required when there are two conflicting test reports

A. 29. In the present case, for the same consignment of goods, the Noticee has two test reports, one from CRCL, Kandla and one of CRCL, New Delhi stating contradictory broken rice percentage of 32.84% and 28% respectively.

B. 30. It is a well settled principle that in cases where there are two conflicting test reports, further investigation needs to be carried out by undertaking re-testing of the goods. In this regard, reliance is placed on the decision of **Sachdeva & Sons, Amritsar vs. Com. of Cus. [1987 (29) ELT 917 (Tribunal)]** wherein it was held that when there are conflicting test reports, the adjudicating authority cannot rely only on one in support of his findings and rejecting the others without any findings.

C. 31. Also, in the case of**Rahul Jhajharia v Commissioner of Customs (Port) 2016 (332) E.L.T 706 (Cal),** in view of conflict between the findings of the CRCL test report with another test report, the Calcutta High Court directed the authorities to draw another sample for re-testing.

D. 32. Also, in the case of**Adani Wilmar Ltd. Vs. Commissioner of Customs, Kandla [2008 (231) ELT 545 (Tri-Ahmd.)]** it was held that where more than one test report of Government laboratories was available on record showing different result, it is not possible to accept only one of them which is in favour of Department.

E. 33. In light of the above submissions, there is no doubt that the samples need to be re-tested since contrary test reports have been obtained. Without conducting re-testing and analysing the result of such re-testing, no proceedings against the Noticee can be initiated.

The purpose of testing the samples was to confirm whether the product is "parboiled rice" and not for checking the broken rice percentage in the same.

A. 34. The Noticee submits that during the relevant period of export, on export of milled white rice export duty was imposed. However, no export duty was imposed on the export of parboiled rice. Hence, to ensure that the exporters are not mis-declaring white rice as parboiled rice to avoid duty, the Government issued trade notice requiring testing of the samples of parboiled rice.

B. 35. Hence, the intention of testing the goods was to confirm is the consignment actually contains parboiled rice and there was no instruction to check the broken rice percentage in the same. This is also evident from the test memo which clearly says that the purpose of testing is to check "whether parboiled rice".

C. 36. Hence, without specific instruction to check broken rice

percentage in both the Kandla Test and the New Delhi Test, it is highly probable that the required mechanism to actually calculate the amount of broken rice would not have been followed since that was not the purpose of testing.

D. 37. The Noticee submits that the test reports indicating the broken rice percentage cannot be held to be conclusive in absence of specific instruction to check the broken rice percentage.

E. 38. In light of the above submissions, the Noticee submits that the test reports being inconclusive cannot be relied upon. Accordingly, the Present SCN based solely on such test reports is liable to be dropped.

F. **THE CRCL, NEW DELHI RE-TEST REPORT IS INCORRECT**

G. 1. The Noticee has already submitted in Ground A as to how the CRCL Test Reports are incorrect and inconclusive. In addition to the above ground, the Noticee submits the following additional submissions:

The re-testing was conducted after a period of one year from the date when sample was drawn which would have hampered the quality of the sample

B. 2. The sequence of events have been listed down as below:

- Representative Sample drawn on 24.7.2023
- Test Report issued by CRCL, Kandla on 16.8.2023
- Sample sent to CRCL, New Delhi for re-testing on 29.4.2024
- Re-testing report issued on 12.6.2024

B. 3. From the above date chart, it can be deduced that the test report was issued by CRCL, Kandla after nearly 2 months from the date the representative samples was drawn and brought to the lab which may have caused the rice in the sample to break leading to excess percentage of Broken Rice.

C. 4. Secondly, after the request was made by the Noticee for conducting a re-test of the said sample, the re-test report was issued by CRCL, New Delhi after a period of nearly one year from the date of drawing of sample which would have further caused the rice to break due to mishandling over a long period of time.

D. 5. It is pertaining to note that the product in question is a food grain which is perishable in nature and subject to deterioration is not stored properly.

E. 6. Since, the final test of CRCL New Delhi took place after a lapse of one year from the drawing of sample, there is a high possibility that the goods would have degraded and the broken rice percentage would have increased.

F. 7. In fact, it is pertinent to note that 4 samples of parboiled rice of different exporters were sent to CRCL New Delhi for retesting. Out of 4 samples, one sample pertaining to parboiled rice exported vide Shipping Bill No. 2799983 dated 28.7.2023 was deteriorated and decomposed completely into brown coloured powder having foul odor. The same was recorded in the CRCL New Delhi Test report.

G. 8. Hence, when one sample of same commodity exported during the same time (inferring that sample would have been drawn at the same time i.e. in July 2023) was deteriorated and decomposed proves that even the other samples would have been deteriorated in quality (may not have been totally decomposed).

H. 9. Hence, the Noticee submits that the CRCL New Delhi Test Report cannot be relied upon because the testing has been done post expiry of one year from the drawing of samples.

I. 10. In this regard, reliance can be placed on the decision of the Hon'ble CESTAT, Mumbai Bench in the case of **Godrej Industries Ltd. Vs. Commissioner of Customs, Mumbai 2017 (357) E.L.T. 899 (Tri-Mumbai)** wherein the Tribunal held that the constituents of the samples may be compromised if there is a delay in their testing and accordingly the test reports were held to be unreliable. The relevant extracts have been reproduced below:

"*We also find that the claim of the appellant's counsel that the carotenoid value decreases when the samples are transported for the analysis purposes and there is a delay in testing of samples. From the table which is reproduced in Para 4, it is noticed that there is a delay of 14, 18 and 38 days in testing the samples by the authorities concerned, which would definitely affect the carotenoid value in the sample, is the law which has been settled by the Tribunal in the case of Ruchi Soya Industries Ltd. v. CC, Kandla - 2014 (313) E.L.T. 401 (Tri.)*"

B. 11. A similar view was taken by Hon'ble CESTAT, Kolkata in the case of **Jhunjhunwala Vanaspati Ltd. Vs. Commr. Of Cus. (Appeals), Kolkata 2019 (369) E.L.T. 776 (Tri. - Kolkata).** Relevant portion of the Judgment is re-produced below:

"2. On behalf of the appellant, it is the submission of Learned Counsel that the denial of the benefit of concessional notification is improper as the test result determining content of beta carotene below the lower in the said notification was not valid because that samples were tested belatedly, during which time the beta carotene dissipates. He placed reliance on the decision of the Tribunal in Ruchi Soya Industries Ltd. v. Commissioner of Customs, Mangalore [2006 (193) E.L.T. 499 (Tri.-Bang.)] which held that -

5. For the above reasons, we find ourselves unable to concur with the finding of the lower authority that the goods in question are not crude palm oil. Considering that the appellant had laid claim to eligibility for the concessional rate of duty, it was not the responsibility of the assessee to draw samples and to send it promptly for testing to ascertain the correctness of the declaration of intimation. That was the responsibility of the assessing officer. Having failed to do so, it cannot transfer the liability of ascertainment to the appellant and, on the basis of result of an invalid test, to fasten the duty liability on the importer."

B. 12. Similar observations have been made in the following decisions

- **Com. of Cus. Vs. KTV Oil Mills [2005 (182) ELT 376 (Tri-Chennai)]**
- **Ruchi Soya Industries Ltd. Vs. Com. of Cus [2006 (193) ELT 499 (Tri-Bang.)]**

B. 13. In view of the above, the percentage of broken rice in the test reports is unreliable and not representative of the whole consignment.

C. 14. Further, as submitted above, since in the period of one year from the date of drawing of sample to the date of re-testing by CRCL New Delhi the goods in the sample would have deteriorated, it is high possibility that the broken rice would have increased in the sample.

D. 15. Even after such increase in broken rice in sample over a period of one year, the CRCL New Delhi Test Report states that the broken rice is 28% as compared to 32% inferred by the CRCL Kandla. Hence, it can be logically inferred that the broken rice percentage in the initial sample drawn and tested by CRCL Kandla would be definitely lower than 28%. It is probable that such broken rice percentage would have been even lower than 25% which is permissible.

E. 16. On this ground itself, the SCN should be dropped.

Letter No. 8-4/2020-S&I dated 28.9.2020 issued by the Ministry of Consumer Affairs, Food & Public distribution providing for the standards of rice is not relevant as it would not apply on export of rice.

B. 17. It has been alleged in the present SCN that the consignment of the exported goods is found to be 'Broken Rice' by referring to the Re-test Report issued by CRCL, New Delhi in which it has been mentioned that the samples tested do not meet the requirements in respect of broken kernel as per the **Letter No. 8-4/2020-S&I dated 28.9.2020** issued by the Ministry of Consumer Affairs, Food & Public Distribution. The relevant extracts of the Re-test Report issued by CRCL has been reproduced as under:

"*Three samples having CLR-23, 25 and 26 are "Parboiled Rice". However, CLR-25 & 26 does not meet the requirement in respect 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 28.09.2020 for Parboiled rice."*

B. 18. The Noticee submits that the Letter no. 8-4/2020 dated 28.9.2020 was issued by the Ministry of Consumer Affairs, Food & Public Distribution to specify the uniform specifications to be followed for central pool procurement of paddy, rice and coarse grains by the Department of Food & Public distribution for the Kharif Marketing season. The said letter was issued to ensure that the farmers get the due price

for their produce and the rejection of stock during procurement is avoided. It is pertinent to note that the uniform specifications in the said letter are to be followed only by the States/ Union Territory Governments and the Food Corporation of India for procurement of Paddy, Rice and coarse grains. In no way, the uniform specifications are applicable to normal trading of such goods including exporting such goods to a foreign land in the course of trade and commerce.

C. 19. The Noticee submits that the inference drawn out by CRCL, New Delhi in its Re-test report that the said sample of Parboiled rice does not meet the broken rice requirement as per the Letter No. 8-4/2020 dated 28.9.2020 is incorrect as the uniform specifications given in the letter do not apply on the goods in question as they are meant for exports in the normal course of trade and commerce between parties who are neither any state/ Union territory governments nor the Food Corporation of India.

D. 20. Even the DGFT has not followed the said standards set by the FDA in as much as the said **Letter No. 8-4/2020 dated 28.9.2020** provides for maximum permissible limit of broken rice as 16% whereas the DGFT has allowed export of rice with Broken Rice Percentage up to 25%. This shows that the DGFT has not followed the Letter No. 8-4/2020 dated 28.9.2020. Hence, the reference to such letter of FDA is incorrect.

E. 21. Hence, the allegation that the consignment of exported goods is found to be "Broken rice' is based on an incorrect application of Letter No. 8-4/2020 dated 28.9.2020.

F. 22. Accordingly, the SCN relying upon such incorrect conclusion is liable to be dropped.

G. **THE CLASSIFICATION OF THE CONSIGNMENT OF GOODS AS BROKEN RICE IS INCORRECT**

Ld. Additional commissioner cannot allege that the goods are broken rice without challenging the final findings of the test reports which consider such goods as parboiled rice

C. 1 The Ld. Additional Commissioner has alleged in the impugned SCN that on the basis of the Test Reports, the goods need to be reclassified under CTH 1006 4000 which covers "Broken Rice".

C. 2 At this point, reference is made Test Memo No.109 pertaining to Shipping Bill No. 2569600 dated 19.7.2023. In the said Test Memo, under the section "FOR OFFICE USE ONLY", the Assistant Commissioner of Customs had written the Test Query as follows – "*Whether Indian Parboiled Rice*" The said Test Memo was signed by the Assistant Commissioner of Customs.

C. 3 As per the instructions of the said Test Memo, the CRCL, Kandla issued the Test Report No. 4575 which first gave the composition of sample and then provided its Notes/Comments. Under the composition section, the

Chemical Examiner noted that the percentage of Broken Grains was 32.84%. However, in the Notes and Comments section of the Test Report below the composition section, the final findings of the Chemical Examiner were mentioned. The final findings stated that "*Based on the physical appearance, forms and analytical findings, it may be considered as Parboiled Rice. However, other tests including microbiological tests could not be confirmed.*"

C. 4 It is submitted that if the final findings of the Chemical Examiner state that the sample may be considered as *Parboiled Rice*, then there is no basis for the Ld. Additional Commissioner to reclassify the product as *Broken Rice*.

C. 5 Similarly, the **Retest Report No. 26-Cus/C-13/2024-25/2190 dated 12.6.2024** issued by CRCL, New Delhi first describes the composition of the sample and then provides the results of the retest. In the composition section, it has been mentioned that the broken kernel (% by mass) of the said sample is 28%. However, in the results of the Retest report it has been mentioned that the samples are indeed Parboiled rice.

C. 6 The proposal of the Ld. Additional Commissioner to reclassify the sample as Broken Rice is contrary to the final findings of the test reports which provides that such sample is Parboiled Rice. Further, the final findings of the test reports to consider the sample as Parboiled Rice was provided after considering all the aspects including the composition of the sample which contained alleged Broken Rice as 32.84% and 28% respectively.

C. 7 It is submitted that without challenging the final findings of the Test Reports to consider the sample as Parboiled Rice, the Ld. Additional Commissioner cannot propose to reclassify the product as Broken Rice.

C. 8 Hence, the classification alleged in the SCN is contrary to the inference in the test reports and cannot be accepted.

Classification is based on the Customs Tariff Act and the General Rules of Interpretation. Rule 3(b) of the General Rules of Interpretation is applicable in the present case.

C. 9 The present SCN has made allegations based on the assumption that Rule 3(b) of the General Rules of Interpretation of the Customs Tariff Act, 1975 which stipulates the classification of the goods in Customs Tariff on the basis of constituent material having maximum percentage is not applicable in the present matter as this case is based on the conclusion where permissible limits have been exceeded. The relevant extracts of the General Rules of Interpretation of the Customs Tariff Act, 1975 has been reproduced as below:

"1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of

the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:

2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled (b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a)the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable."

C. 10 As per General Rules of Interpretation (GRI) 1, the classification shall be adopted as per the terms of the Headings and any relative Section Note or Chapter Notes.

C. 11 Rule 2(a) provides that the heading which provides the most specific description shall be preferred to headings providing a more general description. The said rule is of no help in the present case.

C. 12 Rule 2(b) provides that heading describing a material would include mixture of that material with other substance. However, it states the classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

C. 13 Ideally, Rule 2(b) would apply to the present case in as

much as the goods parboiled rice falling under HSN 1006 3010 would cover parboiled rice mixed with broken rice. Hence, by application of Rule 2(b), the goods are correctly classifiable as parboiled rice.

C. 14 However, since Rule 2(b) states that classification of goods consisting of more than one material would be as per Rule 3, it would also be pertinent to refer to Rule 3.

C. 15 Rule 3(a) is not relevant as it states that the heading which provides the most specific description shall be preferred to headings providing a more general description.

C. 16 Rule 3(b) states that mixtures of two or more substances shall be classified under the heading of the materials which gives them the essential character. Now in the present case, on basis of the quantum of Parboiled rice being more than the broken rice, the parboiled rice is the essential character of the goods and accordingly the goods are classifiable as parboiled rice.

C. 17 There is no exception in the said Rule 3 providing circumstances in which such rule would not apply.

C. 18 The assumption in the Present SCN that the General rules for Interpretation of the Customs Tariff Act, 1975 is not applicable in the present case is vague and baseless. It is a mere conjecture drawn in the Present SCN with no significant backing.

Without prejudice, the Trade Notice No. 17/2022-23 and 18/2022-23 cannot override the ITC HSN policy

C. 19 The present SCN has alleged that the exported goods have been wrongly classified as Parboiled rice under CTH 1006 30 10 and should be classified as broken rice under CTH 1006 40 00 which are classified as prohibited goods as per Chapter 10 of Schedule 2 of the ITC HSN policy read with **Notification No. 31/20150-2020-Customs dated 8.9.2022**. The relevant extracts of Chapter 10 of Schedule 2 of the ITC HS Policy has been reproduced as under:

Sl.No.	***Tariff Item HS Code***	***Unit***	***Item Description***	***Export Policy***	***Policy Conditions***
55	*1006 20 00, 1006 30, 1006 30 10, 1006 30 90, 1006 40 00*	*Kg*	*Non Basmati Rice*	*Free*	*Export to EU Member States…….*
…					
	1006 40 00		*Only for broken rice*	*Prohibited*	*Export will be allowed…..*

C. 20 The allegation has been made on the ground that the consignment of exported goods contains certain percentage of broken rice which is beyond the maximum tolerable limit as

specified by the **Trade Notice No. 18/2022-23 dated 4.10.2022** which was issued in supersession of**Trade Notice No. 17/2022-23 dated 28.9.2022**. The relevant extracts of the Trade Notices are as under:

Trade Notice No. 17/2022-23 dated 28.9.2022

Subject: *Implementation of Notification No. 31/2015-20 dated 8.9.2022 regarding export of broken rice*

1. ….
2. *Subsequently, representations have been received from trade and industry inviting attention to the problems being faced by the exporters in clearing the consignments of other categories of rice due to presence of certain content of "Broken rice" in the said consignment.*
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 "Rice Grading and Marketing Rules, 1939"."*

Trade Notice No. 18/2022-23 dated 4.10.2022

Subject: *Issue related to Export Policy of rice*

…

Accordingly, in supersession of Trade Notice No. 17/2022-23 dated 28.9.2022, 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.

C. 21 The Noticee submits that the test reports of both CRCL, Kandla and CRCL, New Delhi have drawn out the same inference that the consignment goods is nothing but Parboiled rice. During the relevant period, the ITC HSN Policy freely allowed the exports of Parboiled Rice and in no way prohibits the export of Parboiled Rice which contains some percentage of broken rice.

C. 22 However, the Trade Notice No. 18/2022-23 issued by DGFT is imposing restrictions on the export of Parboiled Rice which is freely allowed as per the ITC HSN Policy. This anomaly puts the said Trade Notice in stark contrast with the ITC HSN policy.

C. 23 It is a settled principle that Circular and Trade Notice which are contrary to the statutory provisions have no

existence in law. In this regard, reliance is placed on the following decisions:

- **CCE Vs. Ratan Melting & Wire Industries [2008 (12) STR 416 (SC)]**
- **UCO Bank Vs. CIT [1999 (111) ELT 673 (SC)]**
- **Com. of Cus. Vs. Baroda Rayons Corporation Ltd. [2023 (383) ELT 375 (Guj.)]**
- **Amit Cotton Industries Vs. Pr. Com of Cus. [2019 (29) GSTL 200 (Guj.)]**

A policy decision cannot be taken by issuance of circular or trade notice, the jurisdiction of which rests only with the Legislature/Parliament.

C. 24 It is evident from the Trade Notice No. 18/2022-23 dated 4.10.2022 that a restriction is being imposed on the export of Parboiled Rice by specifying the maximum tolerable limit of broken rice in a said consignment. Such Trade Notice is directly making a change in the ITC HSN policy on the export of Parboiled rice.

C. 25 The Noticee submits that changein policy cannot be brought by issuance of Circular or Trade Notice and rather the same needs to be given effect to by way of amendment in Act. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Kunnathat Thatehunni Moopil Nair etc. v. State of Kerela and Another [1960 SCC Online SC 7]** wherein the Hon'ble Supreme Court has held as under (relevant portion of Para-7 is extracted herein below) :-

"7. The most important question that arises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Article 265 of the Constitution is a complete answer to the attack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. ***Article 265 imposes a limitation on the taxing power of the State insofar as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the legislature****....."*

C. 26 Relying on the aforesaid decision, the Hon'ble Jharkhand High Court in the case of **Tata Steel Ltd. Vs. UOI [2023 (77) GSTL 350 (Jhar.)]** while dealing with the validity of Circular issued under the GST regime observed as under:

"18. ***It goes without saying that a policy can be changed only by way of an amendment under the parent act and not by a circular and the law is well settled that no taxes shall be levied or collected by way of executive fiat****. In this regard reference may be*

made to a celebrated Constitutional Bench judgment of the Hon'ble Apex Court rendered in the case of Kunnathat Thatehunni Moopil Nair etc. v. State of Kerela and Another reported in 1960 SCC Online SC 7 wherein the Hon'ble Supreme Court has held as under. Relevant portion of Para-7 is extracted herein below :-……."

C. 27 In this regard, reliance is placed on the decision of the Hon'ble Calcutta High Court in the case of **Com. of Cus. Vs. Sawar Agrawal [2020 (372) ELT 686 (Cal.)]** in which it was observed that Instructions that may be issued by the Central Board of Excise and Customs cannot be a substitute for the procedure of amendment or alteration by rules that is delegated to the Central Government. Instructions can pertain to an interpretation to bring about uniformity, but such instructions cannot be used to uproot a class of goods or any product from one chapter and plant it in another. That would be the authority of the Central Government. Relevant portion of the said decision is re-produced below:

"5. It is possible that the goods not answering to a particular description are claimed to be fitted under such description in an attempt to pay lower duty. It is for the Customs authorities to check the nature of the product and ensure that the applicable rate of duty has been paid thereon. In more generic cases of abuse of the lower rates, the Customs authorities may issue instructions to the field officers. Under Section 151A of the Customs Act, 1962, instructions may be issued by the Central Board of Excise and Customs with respect to the levy of duty on a product in so far as such instructions relate to any prohibition, instruction or procedure of import or export of goods or if it is deemed necessary to issue such instruction for the purpose of uniformity in the classification of goods or the levy of duty. ***The instructions that are issued under Section 151A of the Act of 1962 cannot alter the structure of the schedule under the Act of 1975 nor can such instructions be issued for the purpose of altering the position of any goods from one Chapter to another within the First Schedule to the Act of 1975.***

6. Indeed, it is always open to the Central Government to change the quantum of duty or to change the classification of goods and, whether or not the Act is amended, by delegated authority the Central Government may exercise the powers as long as the instrument by which the alteration is brought about is placed before the Parliament. Upon the alteration being placed before the Parliament and being available for inspection and spending the appropriate time, the instrument and the alteration assume statutory force.

7. Instructions that may be issued by the Central

Board of Excise and Customs cannot be a substitute for the procedure of amendment or alteration by rules that is delegated to the Central Government. Instructions can pertain to an interpretation to bring about uniformity, but such instructions cannot be used to uproot a class of goods or any product from one chapter and plant it in another. That would be the authority of the Central Government in accordance with the provisions of the Act of 1975."

C. 28 Hence, the Trade Notice No. 18/2022-23 issued by DGFT restricting the export of Parboiled Rice which is freely allowed in the ITC HSN Policy is in violation of Article 265 of Constitution and has been issued in total abuse of power.

D. **WITHOUT PREJUDICE, THE ENTIRE QUANTITY OF RICE CANNOT BE SAID TO BE RE-CLASSIFIABLE AS BROKEN RICE MERELY BECAUSE THE BROKEN RICE PERCENTAGE IS ABOVE PERMISSIBLE LIMITS BY A MEASELY PERCENTAGE (3%).**

D. 1. It is submitted that the impugned SCN proposes to reject the classification undertaken by the Noticee and classify the goods as 'Broken Rice' under CTH 1006 40 00 solely on the basis of the Test Reports, which *inter-alia*, analyses that the sample received has certain percentage of broken grains.

D. 2. The SCN has also levelled an allegation that the Noticee has resorted to misclassification and mis-declaration of the export cargo in order to evade payment of export duty/cess leviable on export cargo.

D. 3. Even if assuming that the Test Reports are correct, then also merely because the broken rice percentage is above certain prescribed standard by 3%, it cannot be said that the entire quantity of goods needs to be re-classified as "broken rice". The fact still remains that the major quantity of rice is still Parboiled rice.

D. 4. Even both the test reports concludes that the sample is to be considered as "Parboiled Rice". The present SCN has not given any reason or rule / provisions which provides that if broken rice percentage is above a particular limit, the entire consignment has to be re-classified as broken rice.

D. 5. Hence, the proposal for re-classification of products as broken rice is contrary to the test reports and without any legal basis.

D. 6. In view of the above, the proposal to reject the classification of the goods and reclassify them under a different CTH deserves to be dropped.

E. **THE DEPARTMENT HAS NOT DISCHARGED THE BURDEN OF PROVING THAT THE IMPUGNED GOODS ARE CLASSIFIABLE UNDER CTH 10064000**

F. 1 It is submitted that Department has sought to reclassify the impugned goods exported by the Noticee as 'Broken rice' classifiable under CTH 1006 40 00 solely on the basis of the Test Reports which states that the goods comprise 32.84%

and 28% of broken rice respectively without providing any reasoning or method for arriving at the conclusion.

G. 2 The Noticee submits that when the Department proposes to change the classification of the goods, the onus is always on the Department to provide reasons for the re-classification. The Noticee in this regard relies on the decision of the Hon'ble Supreme Court in case of **Hindustan Ferodo Ltd. v. CCE, Bombay, reported in 1997 (89) E.L.T. 16 (S.C.)**. The Hon'ble Supreme Court in this case was concerned with the classification of the "*rings punched out of asbestos boards"*. The authorities held that the same is classifiable in Tariff Item No. 22(F), while the assessee contended that the "rings punched out of asbestos boards" were not marketable and were not classifiable under the said Tariff Item and in any case, they were classifiable under Tariff Item No. 34(A). In the earlier stage of appeal, the Tribunal rejected the appeal filed by the assessee-appellant as reported in 1993 (30) E.L.T. 502. The Hon'ble Supreme Court, however, set aside the order of the Tribunal and held that that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue, and as the Revenue led no evidence, the onus was not discharged by them.

H. 3 The Department ought to produce evidence in the form of reasoned test reports as required under the laws in support of their proposal to re-classify the impugned goods. The Noticee further places reliance on the following case laws

- **Commissioner of Central Excise, Chennai-IV v. Hindustan Lever Ltd., 2015 (323) E.L.T. 209 (S.C.)**
- **H.P.L. Chemicals Ltd. v. Commissioner of Central Excise, Chandigarh, 2006 (197) E.L.T. 324 (S.C.)**
- **Collector of Customs, Calcutta v. Hindalco Industries Ltd., 2007 (217) E.L.T. 343 (Cal.)**
- **Puma Ayurvedic Herbal (P) Ltd. v. Commissioner of Central Excise, Nagpur, 2006 (196) E.L.T. 3 (S.C.)**

E. 4 In addition to the above, it is also submitted that is a settled position of law that mere testing of the sample without providing the nature of test carried out for the ascertainment of quantities and without analysing the existing literature, the Department cannot discharge their burden of proof. A plethora of case laws have established this position.

F. 5 In the case of **Sunrise Traders, Jai Durga Impex v. Collector of Customs, 2022 (1) TMI 468 - CESTAT AHMEDABAD** the Tribunal while holding the entire case of the revenue as unsustainable, held as follows:

"Another reliance of the department is on the report of ATIRA (Ahmedabad Textile Industry Research Association) dated 27.03.2017 states that the actual strength of the warp and weft used in making fabric cannot be ascertained. If we go by all the above reports mentioned except for the report dated 21.03.2017 which classifies the goods as quilt cover all the other reports are inconclusive. If at all any report to be relied upon it is report dated 21.03.2017 which was brushed

aside as tampered by the department without giving any details who tempered with the report and what action was taken. Even if we accept the corrected report and all other reports they are all inconclusive and instead of relying upon them they should have been sent for retesting which the commissioner categorically denied stating that he does not find any cogent reason to grant resampling and retesting at this stage as samples were tested at two different recognised institutions and expert committee. Therefore, the only conclusion that could be drawn from the above facts is department has not discharged their burden of proof and the classification of the department should be rejected as held by Hon'ble Supreme Court and CESTAT in various decisions; In case ***of UIO vs Garware Nylons Ltd. 1996 (87) E.L.T. 12 (S.C.)*** *held: "The burden of proof is on the taxing authorities to show that the particular case or item in question, is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the authority first adjudicating."*

- The above principle regarding the non-satisfaction of the Burden of Proof by the department has also been upheld in the following case laws:
  Indo Australian Humigrow System v. CCE Delhi, 2018 (7) TMI 162
- **Kantilal Manilal & Co. v. Collector of Customs, 1990 (8) TMI 246**
- **Alpha Foram Pvt. Ltd. v. CCE Pune I, 2018 (7) TMI 9**
- **Mahindra Sintered Products Ltd. v. CCE, Pune, 1994 (2) TMI 199 – CEGAT NEW DELHI**

E. 6 In view of the above, it is submitted that the proposal to re-classify the impugned goods under CTH 1006 is liable to be dropped.

F. **PROPOSAL TO CONFISCATE THE GOODS DESERVES TO BE DROPPED**

G. 1 It is submitted that the impugned SCN has proposed to confiscate the goods covered under the Shipping Bill as per the provisions of Section 113 (d) of the Customs Act, 1962.

H. 2 It is submitted that Section 113 (d) of the Customs Act reads as under:

"SECTION 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;

……"

It is submitted that Section 113 of the Customs Act, 1962 provides for confiscation of the goods which are attempted to be exported, contrary to any prohibition imposed by the Act and which are intentionally or knowingly exported.

F. 3 Further, it is also submitted that Section 113(d) is applicable only when any goods are attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibitions imposed by or under the Customs Act, 1962 or any other law for the time being in force.

G. 4 The impugned SCN proposes to confiscate the goods exported by the Noticee, irrespective of the fact as to whether these goods are available for confiscation or not.

H. 5 It is submitted that as the goods have already been exported, the question of confiscating them does not arise.

I. 6 In this regard, reference is made to the case in **Global Impex v Commissioner of Customs, India 2018 (364) E.L.T 807 (Tri. – All)** wherein it was observed that there is no merit in confiscating the goods that have already been exported, especially when request for retesting the samples by some other laboratory was made which was rejected without any plausible reasons.

J. 7 In the case of **Bussa Overseas & Properties v. C.L. Mahar, ACC – 2004 (163) ELT 304 (Bom.)**, the Hon'ble Bombay High Court held that once the goods are cleared for home consumption, they cease to be imported goods as defined in Section 2(25) of the Customs Act, 1962 and consequently are not liable to confiscation under Section 111 of the Customs Act, 1962. The Hon'ble High Court held as under:

"7. …The learned counsel urged that once the goods are cleared for home consumption, then the goods covered by the consignments cease to be imported goods in accordance with the definition of expression `imported goods' under Section 2 of the Act and consequently such goods are not liable for confiscation. There is considerable merit in the submission of the learned counsel. The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled…"

F. 8 The Section 111(o) and Section 113(d) are similarly worded and hence, the logic that goods already imported would not be liable for confiscation would equally apply to interpret Section 113(d) to mean that goods already exported

cannot attract confiscation.

G. 9 It is a well settled law that goods which are not available and have been already exported cannot be confiscated. Reliance is placed on the following decisions:

- **CC Vs. Finesse Creation Inc., - 2009 (248) ELT 122 (Bom.) Maintained in the Hon'ble Supreme Court reported at 2010 (255) ELT A120 (SC)**
- **Com of Cus Vs. GMK Products Pvt Ltd. [2020 (373) ELT 692 (tri-Hyd.)]**
- **Vasudha Pharma Chem Ltd. [2019 (369) 1606 (Tri-Hyd)]**

F. 10 Further, the Noticee is of the Bonafide belief that the goods exported are parboiled rice and has been correctly classified. There is no deliberate attempt on part of the Noticee to export prohibited goods.

G. 11 In the case of **Hindustan Steel Ltd. Vs. State of Orissa - 1978 (2) ELT (J159) (SC),** Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the bonafide belief. Similarly, in the case of **Commissioner of Customs Vs. Kamal Kapoor - 2007 (216) ELT 21 (P&H),** the Hon'ble Punjab & Haryana High Court held that redemption fine or confiscation of goods is permissible where a person, against whom action is taken, has a *mens rea.* It is submitted that the conduct of the Noticee in the present case is totally *bona fide*.

H. 12 It is therefore submitted that it cannot be held that the Noticee has attempted to export the goods which are prohibited and accordingly confiscation under Section 113(d) of the Customs Act is not attracted

Confiscation of goods is not possible where two test reports are contrary and re-testing was not allowed

F. 13 As has been elaborated in the previous submissions, the findings of the Inspection Report by Baltic Control and the CRCL Report are in contradiction to each other. And in view of two differing reports, the goods cannot be confiscated. The submission draws support from the case in HRMM Agro Overseas Pvt. Ltd. v Commissioner of Customs, Kandla 2013 (292) E.L.T. 68 (Tri. - Ahmd.), wherein it was observed that when there are two different opinions given by the two different testing authorities, no provision for confiscation is attracted.

G. 14 In this connection, the Noticee also places reliance in the case of Sachdeva & Sons, Amritsar v Collector of Customs, Bombay 1987 referred to above wherein it was observed as follows: "Though the Customs authorities have the right to examine or to test check the goods brought for export, the Customs authorities cannot order confiscation of the goods or penalty on the basis of the examination or on the certificate obtained without affording an opportunity to the affected persons of rebutting the certificates on which the Customs authorities rely..... Whether on the facts and in the circumstances of the cases, the Additional Collector was

unjustified in ordering confiscation of the three consignments (which are the subject matter of these two appeals) as well as in imposing the penalties on the appellants".

H. 15 Following the ratio of the above judgment, the goods cannot be confiscated as the Noticee has not been given any opportunity for retesting, or for rebutting the findings of the CRCL report.

I. 16 In view of the above, the proposal for confiscation of the goods deserves to be dropped.

J. 17 Thus, the question of penalty arises only when the goods are liable to confiscation.

K. 18 For the reasons mentioned in ground I above, the goods are not liable for confiscation. Accordingly, penalty cannot be imposed.

L. 19 By reasons of the submissions made herewith, it also cannot be said that the Noticee abetted the doing or omission of an act in any manner, which rendered the goods liable to confiscation. In the case of Trade Wings Ltd. Vs. CC - 2009 (243) ELT 439 (Tri.-Mumbai), Hon'ble Tribunal held that mere lack of care and diligence by the Appellants is not sufficient to pin them with the charge of abetment. Similarly, in the case of CC (EP) Vs. P.D. Manjrekar [2009 (244) ELT 51 (Bom.)], the Hon'ble Bombay High Court held that in case of abetment, Revenue has to prove knowledge on the part of the assessee. No such proof has been furnished by the Department in the present case.

M. 20 According to the Re-test report issued by CRCL, New Delhi, the broken rice percentage in the current consignment is 28%, exceeding the permissible limit by only 3%. However, the Present SCN has proposed to classify the entire consignment as broken rice, which is categorized as a prohibited good, thereby subjecting it to Confiscation and Penalty under the Customs Act, 1962.

N. 21 The Noticee submits that, without prejudice, the application of confiscation provisions and penalties for a mere 3% violation of the tolerance limit is unwarranted. The imposition of penal provisions for minor deviations beyond the tolerance limit is deemed unnecessary and disproportionate.

O. **PENALTY IS NOT PAYABLE BY THE NOTICEE**

Penalty under Section 114(i) of the Customs Act is not imposable since the Noticee has not done or omitted to do any act which would render the goods liable for confiscation

G. 1. The impugned SCN has proposed to imposepenalty under Section 114(i) of the Customs Act, 1962 on the Noticee.

H. 2. It is submitted that the penalty under Section 114(i) is imposable on 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, in the case of goods in respect of which any prohibition is in force under the Customs Act or any other law for the time being in force. Section 114 (i)

of the Customs Act is re-produced below:

"SECTION 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], whichever is the greater;"

G. 3. In light of the above, no penalty is payable by the Noticee.

H. **WITHOUT PREJUDICE, MERELY FOR EXCESS OF 3% OF BROKEN RICE FROM THE PERMISSIBLE LIMITS, IMPOSITION OF PENALTY AND CONFISCATION IS NOT CALLED FOR.**

I. 1 The Noticee submits that **Notification No. 31/2015-2020-Customs dated 8.9.2022**, classified broken rice as a prohibited item for export. Additionally, **Trade Notice No. 18/2022-23 dated 4.10.2022 issued by the DGFT**, clarified that rice containing broken rice up to 25% is permissible for export, as it falls within the acceptable limits.

J. 2 Reliance in this regard can be place on the decision of the Hon'ble CESTAT, Hyderabad in the case of **Mahindra & Mahindra Ltd. Vs. Commissioner of Cus., Hyderabad 2019 (370) E.L.T. 1250 (Tri. - Hyd.)** wherein the penalty amount was adjusted accordingly, as the taxpayer diverted only a minor fraction of the duty. The relevant extracts have been reproduced hereunder:

"A small quantity of the goods valued at Rs. 2,10,000/- were confiscated by the impugned order under Section 111(o) of the Customs Act for violation of the conditions of the customs notification. An option to redeem the same has been given under Section 125 by paying redemption fine of Rs. 25,000/- only. We find no reason to interfere with either confiscation or the reasonable amount of fine imposed for redemption of the goods on this count. In the impugned order a penalty of Rs.40 lakhs has been imposed under Section 112 (a) & (b) of the Customs Act upon the appellant for non-compliance of the conditions of the customs notification and clandestine clearance of OE parts to their spare parts division as discussed above. A penalty of Rs. 75,000/- was also imposed on the following individuals who worked with the appellant Shri V. Vaidyanathan - Rs. 75,000/-, Shri C.S. Ramakrishnan - Rs. 75,000/- and Shri S. Upadhya - Rs. 75,000/-. We find that considering that these executives were working for and on behalf of the appellant, there is a case to set aside personal penalty on them. We also find a case to reduce the penalty imposed on the appellant under Sec.112 (a) & (b) for

non-compliance of the customs notification and clandestine removal of parts and accordingly, reduce penalty to Rs. 10 lakhs."

H. 3 Hence, based on the above submissions, the Noticee pleads to waive the penalty and confiscation.

I. The Noticee craves leave to add, alter, amend and/or rescind any of the above submissions at the time of or before the personal hearing.

J. The Noticee craves leave to refer and rely upon any case law and/or judgment, as and when produced.

The noticee sent further submission vide mail dated **03.09.2026** which are as follows:

A. **PROPOSED CLASSIFICATION OF THE GOODS AS "BROKEN RICE" IS CONTRARY TO THE FINDINGS AND SCOPE OF THE TEST REPORTS**

B. 1. The Ld. Additional Commissioner has alleged in the Present SCN that, on the basis of the Test Reports, the exported goods merit classification under CTH 1006 4000 as "Broken Rice". The said proposal is contrary to the findings recorded in the very test reports relied upon by the Department.

C. 2. At the outset, it is submitted that the purpose of testing the samples was to ascertain whether the exported goods were "Parboiled Rice" and not to determine the percentage of broken rice for classification purposes. During the relevant period, export duty was leviable on certain categories of rice, whereas no export duty was imposed on parboiled rice. Accordingly, the authorities required testing of export consignments declared as parboiled rice to verify whether the goods exported were indeed parboiled rice. This intention is evident from the test memo itself.

D. 3. In this regard, reference is invited to Test Memo No. 109 pertaining to Shipping Bill No. 2569600 dated 19.07.2023. Under the column "FOR OFFICE USE ONLY", the Assistant Commissioner of Customs specifically framed the test query as "*Whether Indian Parboiled Rice*". Thus, the laboratory was called upon to determine whether the sample was parboiled rice and not whether it contained a particular percentage of broken rice warranting classification as "Broken Rice".

E. 4. Pursuant to the aforesaid Test Memo, CRCL, Kandla issued Test Report No. 4575 dated 16.08.2023. In the composition portion of the report, the Chemical Examiner recorded that the percentage of broken grains was 32.84%. However, after considering the physical appearance, form and analytical findings of the sample, the Chemical Examiner recorded the final findings in the Notes/Comments section as follows:

"Based on the physical appearance, forms and analytical findings, it may be considered as Parboiled Rice."

A. 5. Thus, despite being aware of the percentage of broken grains in the sample, the final conclusion of the Chemical Examiner was that the sample may be considered as Parboiled Rice.

B. 6. Similarly, CRCL, New Delhi, in Retest Report No. 26-Cus/C-13/2024-25/2190 dated 12.06.2024, recorded that the broken kernel content of the sample was 28% by mass. However, in the results of the retest, the laboratory concluded that the samples were Parboiled Rice. Thus, both the original test report and the retest report consistently identify the goods as parboiled rice.

C. 7. It is submitted that the Ld. Additional Commissioner has selectively relied upon only one component of the test reports, namely the percentage of broken kernels, while completely disregarding the final opinion and conclusion recorded by the testing laboratories. Such an approach is impermissible. Once the experts, after considering all physical and analytical characteristics of the sample, have concluded that the goods are parboiled rice, the Department cannot ignore such conclusion and rely only upon isolated observations contained in the reports.

D. 8. It is settled law that a laboratory report has to be read as a whole and not in a piecemeal manner. The Department cannot selectively rely upon one observation contained in the report while ignoring the ultimate conclusion of the expert. Where the testing authority, after considering all physical and analytical parameters, has concluded that the goods are 'Parboiled Rice', the Department cannot reclassify the same goods as 'Broken Rice' without first dislodging or disproving the expert finding recorded in the test report.

E. 9. Reliance in this regard is placed on the decision of the Apex Court in the case of **Gastrade International Vs. Commissioner of Customs, Kandla [2025 4 TMI 23-SC]** wherein Customs sought to classify imported goods as High Speed Diesel based on partial conformity with certain test parameters. The Supreme Court held that classification cannot be founded on incomplete or selective testing and rejected classification based on isolated test results. The relevant extracts have been reproduced hereunder:

"65. It may be noted that in the written report, it was not mentioned that the sample is that of HSD though it mentions that it was tested as per the parameters of IS 1460:2005 and has characteristics of some of the parameters. The Adjudicating Authority as well as the High Court, without there being any such categorical opinion in the report or by the expert, nevertheless, went on to conclude that the samples were indeed of HSD by applying the test of preponderance of probability, which we feel is problematic.

84. In the present case, as noticed above, the finding of the High Court is based primarily on applying the test of preponderance of probability which may not necessarily fulfil the "most akin" test. The High Court came to the conclusion based on the incomplete test reports and noncommittal opinion of the expert Dr. Gobind Singh who in categorical terms had not stated that the imported goods are HSD. There was no opinion that the imported goods are most similar to HSD to satisfy the test of "most akin". The definitive opinion and finding that the imported goods are "most akin" to HSD is missing in the reports and opinion for classifying the imported goods as HSD.

.....

86. For the reasons discussed above, as the results of the test are inconclusive, so being the opinion of the expert, we are unable to agree with the conclusion of the High Court. ...."

A. 10. Without challenging, discrediting or setting aside the final findings recorded in the original test report and the retest report, the Ld. Additional Commissioner cannot seek to reclassify the goods as "Broken Rice". The proposed classification is directly contrary to the expert opinion contained in the very test reports relied upon in the Present SCN.

B. 11. In view of the above, the proposal to classify the goods under CTH 1006 4000 as "Broken Rice" is contrary to the purpose, scope and final findings of the test reports. Accordingly, the allegation of misclassification in the Present SCN is unsustainable in law and deserves to be dropped.

Please note that we have made detailed submissions in our written reply to SCN elaborating the above points and the same may also be referred.

Further, upon request by the noticee some time was granted to them to make additional submissions in the present case.

The noticee sent further additional submissions vide mail dated 03.09.2026 which are as follows:

B. **IN ABSENCE OF CROSS-EXAMINATION OF THE AUTHORS OF THE TEST REPORTS, THE TEST REPORTS CANNOT BE RELIED UPON AS EVIDENCE AND ARE DEVOID OF EVIDENTIARY VALUE**

C. 12. In the present case, the Department has relied upon the laboratory test reports of CRCL, Kandla and CRCL, New Delhi to allege that the exported goods do not conform to the description declared in the Shipping Bills. The conclusions contained in such reports form the very foundation of the Present SCN. However, the experts who authored the reports have not been examined nor subjected to cross-examination. Consequently, the contents of the reports remain untested and cannot be accepted as conclusive proof of the nature or

classification of the goods.

D. 13. Reliance is placed on the decision of the Hon'ble Madras Tribunal in **Kiran Overseas v. Collector of Customs, 1988 (38) E.L.T. 362 (Tribunal)**, wherein it was held that where reliance is placed on an expert report and the correctness of such report is disputed, the affected party must be afforded an opportunity to cross-examine the expert. The relevant extracts have been reproduced hereunder:

*"**4.** The adjudicating authority having come to above finding has again chosen to uphold his earlier order imposing duty liability with penal consequences on the appellant. The clause appearing in the test report of the CLRI is that their "opinion is technical and academic and not intended for publicity, advertisement and legal purposes". The CLRI cannot take advantage of this clause in their report for avoiding cross-examination. It is well settled that if any reliance is placed on the expert report, as has been in this case by the Collector, the report of the CLRI expert Is challenged by the aggrieved party and if the aggrieved party wants to avail of the opportunity to cross-examine the expert in question regarding correctness of the analysis, such an opportunity should be afforded to the aggrieved person. This is a basic facet of law conforming to principles of natural justice and principles of natural justice ordain that opportunity of cross-examination be afforded by Quasi-judicial authorities of third parties or experts on whose opinion reliance has been placed against the party ih adjudication and this legal position is no longer res Integra and is well settled by the judicial pronouncements' of the Supreme Court, it is most unfortunate and regretable in the extreme that an expert body like CLRI when summoned by the Collector should choose to defy the summons and would not even find it convenient to send any of its officers. The CLRl is a research Institution of the Government of India and particularly in matters where opinion of the CLR! by analysis of samples is sought for, the CLRI while giving the report should also make it convenient to send one of its officers to testify when summoned for cross-examination. The condition in the test report that the same is academic and cannot be used for legal purposes obviously indicates that even if the expert opinion is found to be. erroneous or wrong, the expert cannot.be proceeded against for damages in any Court of Law. The report of the CLRI cannot be taken as a conclusive piece of evidence when the same-is challenged and sought to be disproved in cross-examination because the expert however competent, cannot claim infallibility. Unless there is express provision in law about the conduciveness of the report of the expert, one cannot presume the report of the expert as-conclusive. The expert opinion is only a relevant piece of evidence and it is ultimately for the Quasi-judicial authorities to adjudge the correctness of the same by application of their mind having regard to the facts and circumstances of each case."*

A. 14. The ratio of the aforesaid decision squarely applies to the present case. The laboratory reports relied upon by the Department merely contain the opinion of the examiner. Such opinion cannot be elevated to the status of conclusive evidence, particularly when substantial liabilities including confiscation and penalties are proposed on the strength of those opinions alone.

B. 15. Accordingly, the two test reports relied upon in the Present SCN have no independent evidentiary value and cannot legally constitute the basis for arriving at findings of misdeclaration, confiscation of goods or liability to penalty. Once the test reports are excluded from consideration, the very foundation of the allegations contained in the Present SCN collapses. Therefore, the proposals for confiscation, redemption fine and penalty are liable to be dropped on this ground alone.

11. RECORDS OF PERSONAL HEARING:

The noticee was given personal hearing on 02.09.2026 at 16:30 hrs. and Shreyash Agrawal, senior advocate appeared on behalf of the exporter for the personal hearing on 02.09.2026 at 16:30 hrs in virtual mode and during the conduct of hearing he recorded his submission as under:

1. Test reports are inconclusive and cannot be relied upon as the testing has not been done as per prescribed standards.
2. When test sample is drawn incorrectly or improperly and not as per standards, the consequent test report is unreliable.
3. Where the test reports are vitiated, the same are not reliable as the testing was not carried out in conformity with the prescribed specifications.
4. Retesting is required when there are two conflicting test reports.
5. The CRCL, New Delhi Re-test Report is Incorrect, Retesting was conducted after a period of one year which would have hampered the quality of sample.
6. CRCL Test Report Cannot Determine Tariff Classification; Classification Must Be Governed by ITC (HSN) Policy Read with the General Rules for Interpretation (GRI).
7. The Department has not discharged the burden of proving that the Impugned goods are classifiable under CTH 10064000.
8. Proposal to confiscate the goods deserves to be dropped.
9. Penalty under Section 114 is not imposable since the noticee has not done or omitted to do any act which would render the goods liable for confiscation.
10. Without Prejudice merely for excess of 3% of Broken Rice From the permissible limits impositions of penalty and confiscation is not called for.
11. In absence of cross-examination of the authors of the test

reports, the test reports cannot be relied upon as evidence and are devoid of evidentiary value.

12. DISCUSSION AND FINDINGS:

I have carefully gone through the facts of the case, SCN, records of the case, and written submission of the noticee. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice and case records, I find that the following issues arise for determination in this adjudication whether

(i) The classification of the goods declared as "Indian Parboiled Rice" classified under CTH-10063010 should not be rejected and to be re-classified as "Broken Rice" under CTH-10064000*;*

(ii) The goods covered under Shipping Bill No. 2569600 dated 19.07.2023 having FOB value of **Rs.44,02,518/-** 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;

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

(i) The primary defence of the noticee is that the test reports are unreliable on account of alleged defects in sampling, testing procedure and delay in testing.

(ii) I find that the impugned goods were initially tested by **CRCL, Kandla**, and the test report recorded **32.84% broken grains**. Thereafter, upon the request of the noticee, the sample was re-tested by **CRCL, New Delhi**, which reported **28.00% broken grains**. Thus, both the reports independently record a percentage of broken grains substantially exceeding the permissible level of **25%** referred to in DGFT Trade Notice No. 18/2022-23 dated 04.10.2022 in respect of normal rice. The said Trade Notice specifically clarified that rice containing 5% and 25% broken rice is treated as normal rice with permissible limits of broken rice as per standards. The variation in the numerical percentage does not alter the regulatory consequence arising from the result. Therefore, the contention that the two test reports are conflicting and consequently require another re-test is not acceptable. A re-test is ordinarily relevant where the subsequent report materially contradicts the earlier report. In the present case, both reports are consistent on the decisive issue, i.e. the broken-grain content exceeds the permissible level.

(iii) The contention regarding improper sampling is also not supported by any independent technical evidence placed on record by the noticee. No specific defect in the manner of drawal, sealing, identification or transmission of the sample has been established by the noticee. In these circumstances, I find no sufficient basis to discard the CRCL test reports. The reports are therefore relied upon for determining the physical characteristics and quality parameters of the impugned goods. It is also pertinent to mention that the sample of goods

were collected and sealed in the presence of representative of the exporter.

(iv) As regards the contention that the re-test was conducted after approximately one year and that the sample might have deteriorated, I find that in the present case, the first sample was tested by CRCL, Kandla and thereafter, at the request of the noticee itself, the competent authority permitted re-testing and the sample was forwarded to CRCL, New Delhi. Thus, the noticee has also availed the facility of re-testing contemplated under the Board's guidelines.

(v) The applicable legal position is contained in Para 2(f) of CBIC Circular No. 30/2017-Cus dated 18.07.2017. The said provision states that where there is variation between the first test and the re-test, the competent authority shall take a decision relying upon either of the reports and shall specify the grounds in writing. It further provides that a further re-test may be ordered only where the competent authority is unable to decide whether to rely upon the first or re-test result. Most importantly, the Circular states that this option "should not be resorted to in every case of variation between the first test and re-test results."

(vi) I find that both reports record the broken-grain percentage as being above 25%. The first report records 32.84%, while the re-test report records 28%. Therefore, the two reports differ in degree but not in the material conclusion relevant to the present proceedings. Even if the lower of the two results, i.e. 28%, is adopted in favour of the noticee, the result remains above the permissible 25% level referred to in DGFT Trade Notice No. 18/2022-23 dated 04.10.2022. In the present matter, both laboratories have quantified the broken-grain content. I therefore hold that no further re-testing is necessary.

(vii) The noticee has further contended that the sample may have deteriorated due to the passage of time between the original testing and re-testing. However, no scientific evidence has been produced to establish that such storage would necessarily result in an increase in the percentage of broken rice. On the contrary, the CRCL, New Delhi re-test conducted after approximately one year recorded 28% broken rice, which is lower than the 32.84% reported by CRCL, Kandla. Thus, the subsequent test result does not support the noticee's contention regarding deterioration of the sample, and the said contention is accordingly not acceptable.

(viii) The noticee has contended that the CRCL test report cannot determine tariff classification and that classification is required to be determined under the Customs Tariff read with the General Rules for Interpretation and ITC (HS) Policy.

(ix) The applicable ITC (HS) Export Policy separately recognises CTH 10064000 – Broken Rice. DGFT Notification No. 31/2015-2020 dated 08.09.2022 amended the export policy of goods under HS Code 10064000 from "Free" to "Prohibited", with effect from 09.09.2022. Further, DGFT Trade Notice No. 18/2022-23 dated 04.10.2022 clarified that rice containing 5% and 25% broken rice constitutes normal rice with permissible limits of broken rice.

(x) In the present case, the broken-grain content is reported at **32.84% in the first test and 28.00% in the re-test**, both being above 25%. Therefore, the goods cannot be treated as normal rice within the permissible broken-grain limit contemplated by the aforesaid DGFT clarification. Accordingly, on the

basis of the declared description read with the actual characteristics established through the CRCL reports and the applicable ITC (HS) Export Policy, I hold that the impugned goods are liable to be treated/classified as **"Broken Rice" under CTH 10064000** for the purpose of export policy.

(xi) DGFT Notification No. **31/2015-2020 dated 08.09.2022** amended the export policy of Broken Rice under HS Code **10064000** from "Free" to **"Prohibited"**, with effect from **09.09.2022**. The subject Shipping Bill was filed on **19.07.2023**, i.e. much after the prohibition came into effect. The transitional arrangements contained in the said Notification were limited to specified consignments existing before the effective date of prohibition. No material has been placed on record to establish that the subject consignment falls within any such transitional category. Therefore, the impugned goods, being classifiable as Broken Rice under CTH 10064000 and being entered for export after the prohibition had come into force, were prohibited for export, subject to the applicable policy provisions.

(xii) The noticee declared the goods in the Shipping Bill as **"Indian Parboiled Rice" under CTH 10063010**. However, the test results establish that the consignment contained broken grains in excess of the permissible limit. Consequently, the goods as actually presented for export did not correspond with the material particulars declared in the Shipping Bill. The incorrect declaration of description and classification is therefore a material misdeclaration for the purposes of export clearance.

(xiii) Section 50 of the Customs Act, 1962 requires the noticee to make a declaration in the Shipping Bill with respect to the goods intended for export. The responsibility for the correctness of the particulars declared in the Shipping Bill rests upon the noticee. In the present case, the declared description and classification were not found to correspond with the actual characteristics of the goods established through the CRCL reports. I therefore hold that the noticee has contravened the provisions of Section 50 of the Customs Act, 1962.

(xiv) Section 113(d) of the Customs Act, 1962 provides for confiscation of goods attempted to be exported or brought within the limits of a customs area for the purpose of export contrary to any prohibition imposed under the Customs Act or any other law for the time being in force. Section 113(i) covers goods entered for exportation which do not correspond in respect of value or any material particular with the entry made under the Customs Act.

(xv) Since the goods were declared as "Indian Parboiled Rice" under CTH 10063010, whereas as per test results goods are liable to be treated as Broken Rice under CTH 10064000 because of broken-grain content beyond the permissible limit. Hence, the goods were entered for export under an incorrect description and classification and, further, were subject to a prohibition applicable to Broken Rice. Accordingly, I hold that the impugned goods covered under Shipping Bill No.**2569600 dated 19.07.2023**, having declared FOB value of **Rs. 44,02,518/-**, are liable to confiscation under Sections 113(d) and 113(i) of the Customs Act, 1962.

(xvi) Section 114(i) of the Customs Act, 1962 provides for penalty where any person, in relation to goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 113, or abets such act or omission. In the case of goods in respect of which prohibition is in force,

the penalty may extend to three times the value of the goods as declared by the noticee or the value as determined under the Act, whichever is greater.

(xvii) I therefore find that the acts and omissions attributable to the noticee rendered the goods liable to confiscation under Section 113(d) and Section 113(i) of the Customs Act, 1962 and consequently attract the provisions of Section 114(i). The contention that no act or omission was committed by the noticee is therefore not acceptable.

(xviii) As regards the plea that the excess was only approximately 3%, I find that the test results recorded **32.84% and 28.00%**, respectively, against the 25% permissible level referred to in the applicable DGFT clarification. Further, the issue is not merely the extent of excess but whether the goods fell within the category of normal rice permitted for export or within the prohibited category of Broken Rice. Once the applicable threshold was exceeded, the policy consequence follows. Hence, I hold that the noticee is liable to penalty under Section 114(i) of the Customs Act, 1962.

(xix) The noticee through their authorized representative has contended that the experts who authored the reports have not been examined nor subjected to cross-examination. Consequently, the contents of the reports remain untested and cannot be accepted as conclusive proof of the nature or classification of the goods.

(xx) I find that the noticee has not demonstrated that any specific request for cross-examination of the Chemical Examiner was made during the adjudication proceedings and thereafter denied by the adjudicating authority. The mere contention during personal hearing that the authors of the reports were not cross-examined cannot, by itself, render an otherwise official laboratory report devoid of evidentiary value. In the present case, I find that noticee was given ample opportunity to present their defense, access all relied-upon documents (RUDs), and participate in personal hearings. The noticees were afforded full opportunity to defend themselves during hearings, this satisfied principles of audi alteram partem.

14. The entire issue in the present matter is 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 which was got tested from CRCL. First time the sample of the goods was tested from CRCL Kandla and further on request by the noticee the same was tested by CRCL Delhi. Both the test reports were provided to the noticee. I also find that as per both test repots received from CRCL, Kandla and CRCL, New Delhi the percentage of Broken Grains is beyond the prescribed limit by DGFT. More than 25% of the Broken Rice were found in the goods as per both test reports.

14.1. Thus, the notice tried to export the impugned goods by 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 noticee tried to export the prohibited goods.

14.2. I find that the noticee 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 32.84%" and as per Test Report, CRCL, Delhi the consignment is found to be "Parboiled Rice having broken percentage of Broken 28.00%". 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 exported is to be considered as Broken Rice classifiable under CTH-10064000.

14.3. 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:-*

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

14.4 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".*

14.5. 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"

14.6. I find that on conjoined reading of the above Notification No.31/2015-2020-Customs dated 08.09.2022, 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 case 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.

14.7 Further, Notification No.31/2015-20 dated 08.09.2022 amended export policy of broken rice (CTH 10064000) from free to prohibited and the limit of tolerance of "Broken rice" in consignments of rice is allowed in terms of The Rice Grading and Marketing Rules,1939. Also, as per notification issued by the Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution, vide File No. 8-4/2020-S & I dated 28.09.2020, limit of broken rice is 16% for Parboiled/Single Parboiled Rice, for both Grade 'A' and Common Rice. The said notification issued Uniform specification for grade 'A' & 'Common' Rice (Kharif Marketing Seasons 2020-2021 which is as under:

Rice shall be in sound merchantable condition, sweet, dry. clean, wholesome, of good food value, uniform in colour and size of grains and free from moulds, weevils, obnoxious smell, admixture of unwholesome poisonous substances, *Argemone mexicana* and *Lathyrus sativus* (Khesari) in any form, or colouring agents and all impurities except to the extent in the schedule below. It shall also conform to prescribed norms under Food Safety & Standards Act, 2006/Rules prescribed hereunder.

SCHEDULE OF SPECIFICATION

S.No.	Refractions		Maximum Limit (%)	
			Grade 'A'	Common
1.	Broken*	Raw	25.0	25.0
		Parboiled/single parboiled rice	16.0	16.0
2.	Foreign Matter**	Raw/Parboiled/single parboiled	0.5	0.5

		rice		
3.	Damaged #/ Slightly Damaged Grains	Raw	3.0	3.0
		Parboiled/single parboiled rice	4.0	4.0
4.	Discoloured Grains	Raw	3.0	3.0
		Parboiled/single parboiled rice	5.0	5.0
5.	Chalky Grains	Raw	5.0	5.0
6.	Red Grains	Raw/Parboiled/single parboiled rice	3.0	3.0
7.	Admixture of lower class	Raw/Parboiled/single parboiled rice	6.0	—
8.	Dehusked Grains	Raw/Parboiled/single parboiled rice	13.0	13.0
9.	Moisture Content @	Raw/Parboiled/single parboiled rice	14.0	14.0
10.	FRK (Fortified Rice Kernel)	In case of procurement of fortified rice stock, 1% of FRK (w/w) should be blended with normal rice stock.		

* Not more than 1% by weight shall be small broken.
** Not more than 0.25% by weight shall be mineral matter and not more than 0.10% by weight shall be impurities of animal origin.
# Including pin point damaged grains.
@ Rice (both Raw & Parboiled/Single Parboiled) can be procured with moisture content upto a maximam limit of 15% with value cut. There will be no value cut upto 14%. Between 14% to 15 moisture, value cut will be applicable at the rate of full value

Hence, as per above clarification, the limit of broken rice in the instant case is far beyond the tolerance limit prescribed for parboiled rice.

14.8 I find that the export of the subject goods was permitted on provisional basis against execution of a Test Bond by M/s R V Exports Pvt. Ltd., pending receipt of the laboratory test report. The Test Bond executed by the exporter stipulated that, in the event of failure of the cargo in the test report, the exporter shall pay to the President of India the amount finally assessed in respect of the goods covered under the Shipping Bill, along with applicable interest and penalty, if any imposed, and further recovery of the bonded amount by the proper officer. The subject Shipping Bill No. 2569600 dated 19.07.2023 covered 132.500 MT of goods declared as 'Indian Parboiled Rice', having FOB value of ₹44,02,518/-, and the Test Bond was furnished for ₹52,83,021/-. In the present case, the subject goods are liable to confiscation under Section 113(d) of the Customs Act, 1962 due to the adverse test result having triggered the conditions of the said Bond, the exporter is legally bound to honour the undertaking furnished therein. Accordingly, the Test Bond is liable to be enforced in accordance with its terms in the present proceedings.

14.9. I find that the noticee has failed to declare correct description and correct classification of the impugned goods exported vide Shipping Bill No. 2569600 dated 19.07.2023. It appeared that the noticee 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 noticee has contravened the provisions of the Section 50 of the Customs Act, 1962. Therefore, for the acts and omission on the part of the noticee, the goods

are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962 and the notice 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][2][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;

14.10. In view of the above it clearly appears that the noticee 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 noticee 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 noticee, the goods are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962 and the noticee is therefore liable for penalty under Section 114(i) of Customs Act, 1962.

15. In view of the reply received from noticee, 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.2569600 dated 19.07.2023 i.e. "Indian 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.2569600 dated 19.07.2023 having FOB value 44,02,518/- under Section 113(d) & 113(i) of the Customs Act, 1962. However, I give an option to the exporter to redeem the goods on payment of Redemption Fine o f **Rs. 4,00,000/- (Rupees Four Lakh only)** under the provisions of section 125 of the said Act ibid.

iii. I order to impose and recover **Penalty of Rs. 2,00,000/- (Rupees Two Lakh Only)** on the noticee under Section 114(i) of the Customs Act, 1962.

16. This order is issued without prejudice to any other action that may be contemplated against the noticee 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.

Digitally signed by
AMIT KUMAR MISHRA
Date: 08-10-2026
16:35:54

(Amit Kumar Mishra)
Additional Commissioner (Exports),
Customs House, Mundra.

Dated: As e-signed

F. No. CUS/ASS/MISC/798/2023-EA

BY SPEED POST

To,
M/s R V Exports Pvt. Ltd,
A18 Nityanand Nagar A,
Queens Road Vaishali Nagar,
Jaipur, Rajasthan-302021.

Copy to:

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