



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

A	File No.:	CUS/APR/BE/MISC/552/2023-Gr 1
B	Order-in-Original No.:	MCH/ADC/MK/57/2023-24
C	Passed by:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	30.05.2023
E	Date of issue:	30.05.2023
F	Importer:	<b>M/s. D A Patel</b> (IEC No.0891013873) B-93, Old Market Yard, Unjha, Mehsana, Gujarat- 384170
G	SCN No. & Date	Importer waived SCN vide letter dated 21.04.2023
H	DIN	20230571MO0000444D1F

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the **COMMISSIONER OF CUSTOMS (APPEAL), MUNDRA**, having office at **7<sup>th</sup> floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009** in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

**Sub.: Re-import of “Cumin Seed Sortex” by M/s D A Patel (IEC No.0891013873)- m/reg.**



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**BRIEF FACTS OF THE CASE**

**M/s. D A Patel** having their address at B-93, Old Market Yard, Unjha, Mehsana, Gujarat- 384170 (IEC No.0891013873) [*hereinafter referred to as the importer for the sake of brevity*] filed Bill of Entry No. 4298273 dated 21.01.2023 through their Custom Broker M/s Leap International Private Limited(AAACL1251FCH002) for clearance of “Re-import of Cumin Seed Sortex” valued at Rs. 75,41,097/- imported vide BL No.- HLCUGOA230110649 dated 07.01.2023. Re-Imported goods are covered under Commercial Invoice No. E060 dated 23.10.2022 issued by M/s Fresh Tropical SRL by Jawad, Via Alberto Da Guissano 24, 2021-Carbeta (MI), Italy. The said re-imported goods were exported vide S/B No. 5042522 dated 25.10.2022. The details of Re-imported goods are as under:

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**Table A**

<b>Sr No. as per Bill of Entry</b>	<b>Description as per Bill of Entry &amp; Commercial Invoice</b>	<b>Declared CTH</b>	<b>Qty (In MTS)</b>
01	Cumin Seed Sortex (Export Return shipment (Re-Import) SB No. 5042522 dated 25.10.2022	09093129	26

**1.1** The Importer has mentioned in their letter-dated 21.04.2023 that said cargo was rejected by the buyer from Italy. Further, they filed for FSSAI NOC for the same, but the same has been rejected by FSSAI Office, Mundra. Hence, they wish to re-export of the same cargo to their new buyer M/s KP foods LLC, Dubai, UAE.

**1.2** On re-import of the said cargo, the samples were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra vide sample ID No. 537022023FC8RHAP and forwarded the Rejection Report vide NCC No. NCC202300011345 dated 12.02.2023.

**1.3** The FSSAI Officer, Mundra forwarded their analysis report in respect of the representative sample vide their report No. RNCC202300000128 dated 18.03.2023 are tabulated hereunder: -

**TABLE B**

<b>Sr No.</b>	<b>Item</b>	<b>Remark</b>
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in the B/E		
1.	Cumin Seed Sortex (Export Return shipment (Re-Import) SB No. 5042522 dated 25.10.2022(Details as per Export Invoice) [09093129, other]	This office is not in a position to issue NOC of the product(s) mentioned above as the result(s) of the inspection/analysis shows that the sample(s) do not conform to the specification(s) under the FSS Act 2006, and rules and regulations made thereunder.  Remark: - Sample does not conform to provision of FSS Act, Rules and Regulations made thereunder.  Rejection Reason:- Safety Parameters

**1.4** Further, the importer had filed review appeal vide application dated 29.03.2023 before the FSSAI authorities against their report No. RNCC202300000128 dated 18.03.2023 which was rejected vide order No. 56-Review-WR/2023 dated 18.04.2023 by the Director(SRO)/Review Officer (Import-WR), FSSAI, Chennai Port Trust Building, Rajaji Salai, Chennai- 600001. The review order is reproduced here

The first review application was examined and the following order is given:

*At referral laboratory re-testing, it is noted that the re-imported sample of Cumin contains higher amount of pesticide "Thiamethoxam" which exceeds the prescribed limit as per regulation 2.3.1 of the Food Safety and Standards (Contaminants, Toxin, and Residues) Regulation 2011. Thus, the consignment "Cumin Seed Sortex (Export Return Shipment (Re-import))" is unsafe as per section 3(1) (zz)(xii) of Food Safety and Standard Act, 2006.*

Accordingly, the consignment shall be rejected as per Section 25(i) of food Safety and Standards Act, 2006.

**1.5** Further, the importer has submitted a Sale Contract having No-KPF/PO/P43/2023 dated 20.04.2023 between the M/s KP Foods LLC, Shop No. S10, Al Dallah Building AL RAS 30/1. PO Box No. 1976, Al RAS,

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Deira, Dubai, UAE and the importer M/s D A Patel, B-93, Old Market Yard, Unjha, Mehsana, Gujarat- 384170. The said Sale Contract is for re-export of the above-stated entire consignment. Moreover, the importer has submitted a letter of their new buyer M/s KP Foods LLC stating that pesticide reports are not required by them and agrees to accept the cargo in same condition.

**1.6** From the above, it appears that the importer does not comply with FSS Act, 2006 and Rules made thereunder. Further, the imported goods are prohibited as per Section 2(33) of the Customs Act, 1962 & liable for confiscation as per Section 111(d) of the Customs Act, 1962 and allowed for re-export or destruction. For this action, the importer is liable for penal action as per Section 112 of the Customs Act, 1962.

## **2. LEGAL PROVISIONS APPLICABLE IN THE CASE:**

Following provisions of law are applicable in the present case:

### **SECTION 111 (d) OF THE CUSTOMS ACT, 1962:**

*111. Confiscation of improperly imported goods etc.*

*The following goods brought from the place outside India shall be liable to confiscation:*

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force.*

### **SECTION 112(a) OF THE CUSTOMS ACT, 1962:**

*112. Penalty for improper importation of goods, etc.*

*Any person,—*

*(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, shall be liable,—*

- i. in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [not exceeding the value of the goods or five thousand rupees], whichever is the greater;*

## **SHOW CAUSE NOTICE & PERSONAL HEARING**

- 3.** The importer vide letter dated 21.04.2023 submitted that they don't

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require Show Cause Notice in the matter. Following the principal of natural justice, opportunity of personal hearing in the subject case were granted on 16.05.2023. Shri Suresh Patel, Partner of M/s D A Patel appeared on 16.05.2023 for personal hearing in the case and requested to re-export the goods covered under Bill of Entry No. 4298273 dated 21.01.2023. Further, he requested to take a lenient view while adjudicating the case.

### **DISSCUSSION AND FINDINGS**

**4 .** I have carefully gone through the case records. The importer vide letter dated 21.04.2023 have requested for waiver of the show cause notice in the matter. Thus, I find that principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records. The points to be decided in the instant case are:-

- I. Whether the imported goods (details mentioned in Table A Above) weighing 26 MTS and valued at Rs. 75,41,097/- are liable for confiscation under Section 111(d) of the Customs Act, 1962.
- II. Whether the importer is liable for penal action under 112(a) of Customs Act, 1962.

**4.1** I find that the samples were drawn by the Food Safety and Standards Authority of India (FSSAI) officer, Mundra vide sample IDs No. 537022023FC8RHAP and forwarded the Rejection Report vide NCC No. NCC202300011345 dated 12.02.2023.

**4.2** I further find the remarks pertains to Rejection Report vide NCC No. NCC202300011345 dated 12.02.2023 issued by the FSSAI, Mundra is that sample does not conform to provision of FSS Act, 2006 Rules and 2011 made thereunder (Version XXV dated 23.09.2022 & contaminants, Toxins & residue regulation (Version VI dated 27.01.2022) with respect to tested parameters & values.

I also find that the importer had filed review appeal before Review Officer(Imports-WR) vide application dated 29.03.2023 before the FSSAI authorities against rejection report No. NCC202300011345 dated 12.02.2023 which was rejected vide order No. 56-Review-WR/2023 dated 18.04.2023 by the Director(SRO)/Review Officer (Import-WR), FSSAI,

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Chennai Port Trust Building, Rajaji Salai, Chennai- 600001. The review order is reproduced here

The first review application was examined and the following order is given:

*At referral laboratory re-testing, it is noted that the re-imported sample of Cumin contains higher amount of pesticide "Thiamethoxam" which exceeds the prescribed limit as per regulation 2.3.1 of the Food Safety and Standards (Contaminants, Toxin, and Residues) Regulation 2011. Thus, the consignment "Cumin Seed Sortex (Export Return Shipment (Re-import))" is unsafe as per section 3(1) (zz)(xii) of Food Safety and Standard Act, 2006.*

In view of the FSSAI Rejection Report and Review Order as discussed above, I find that these imported items are not suitable for human consumption as per FSS Act, 2006 and Rule & Regulations made thereunder.

**4.3** I find that the importer during the personal hearing and vide letter dated 21.04.2023 has requested to re-export the goods covered under Bill of Entry No. 4298273 dated 21.01.2023. Further, the importer has submitted a Sale Contract having No. KPF/PO/P43/2023 dated 20.04.2023 between the M/s KP Foods LLC, Dubai, UAE and the importer, for re-export of the above-stated entire consignment. Moreover, the importer has submitted a letter of their new buyer M/s KP Foods LLC stating that pesticide reports are not required by them and agrees to accept the cargo in same condition.

**4.4** From the above, I find that the FSSAI did not find the goods fit for home consumption. Prima face, it is seen that said cargo is mainly for the human consumption and such conditions is not fulfilled during FSSAI test, hence, the imported goods may not be cleared from Mundra Port and same is required to be re-exported. The failure of sample resulted into non-compliance of the provisions of Food Safety & Standards Act, 2006 as discussed in the foregoing paras. Therefore, such goods would be treated as prohibited for import and action on such goods and persons involved is to be taken under the Customs Act, 1962.

In view of the above, I find that the importer has violated provisions of FSS Act, 2006 and Rules made thereunder, thus the imported goods are prohibited as per Section 2(33) of the Customs Act, 1962 & liable for confiscation under Section 111(d) of the Customs Act, 1962. For this action, importer rendered themselves liable for the penal action under the provisions of Section 112(a)(i) of the Customs Act, 1962.

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**4.5** I find that the importer has requested to re-export of goods. The CBEC Circular No. 58/2001-Cus. dated. 25.10.2001 prescribes that the goods which are not found fit for human consumption can be either destroyed or to be re-exported after necessary adjudication proceedings. The provision of food safety and standard act 2006 are not specifically restricting the re-export of such failed consignment. Therefore, the option of re-export can be availed by the Importer after payment of redemption fine in lieu of the confiscation on the goods in terms of section 125 of the customs act 1962.

Section 125(1) of the Customs Act, 1962 provides that

*"Whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudging may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such redemption fine as the said officer thinks fit"*

I find that the said provision makes it mandatory to grant an option to the owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Further, in case of prohibited goods, it provides discretion to the officer adjudicating the case which has to be exercised in view of facts and circumstances of the case. Considering these facts, I find it appropriate to grant an option to pay fine in lieu of confiscation on the subject imported goods.

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

### **ORDER**

**5.1** I order for confiscation of imported goods weighing 26 MTS and valued at Rs. 75,41,097/- covered under Bill of Entry No. 4298273 dated 21.01.2023 under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 3,00,000./-** (Rupees Three Lakhs Only) under Section 125 of the Customs Act, 1962 for re-export purpose only.

**5.2** I impose a penalty of **Rs. 2,00,000/-** (Rupees Two Lakhs Only) on



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M/s D A Patel(IEC-0891013873) under Section 112 (a)(i) of the Custom Act, 1962.

**6.** This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Signed by  
Mukesh Kumari  
Additional Commissioner  
Date: 30-05-2023 16:33:44  
Import Section, CH Mundra

F.No. CUS/APR/BE/MISC/552/2023-Gr 1 Date:30-05-2023

To,

**M/s. D A Patel**

(IEC No.0891013873)

B-93, Old Market Yard, Unjha,

Mehsana, Gujarat- 384170

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. Guard File.