

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: CUS/ASS/MISC/648/2024-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/51/2023-24 dated 04-06-2024
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 04-06-2024
E. Show Cause Notice No. & Date	: Show Cause Notice and Personal Hearing waived by the noticee.
F. Noticee(s)/Party/Exporter	: M/s Diat Agro Holding Pvt. Ltd., (IEC 0511093748), Balaji Place, 2633-36, Naya Bazar, Delhi, New Delhi
G. DIN	: 20240671MO0000000FA2

1. यह अपील आदेश संबन्धित को निःशुल्क 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 धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

"सीमा शुल्क आयुक्त (अपील),

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS),

**Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009."**

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 इयूटि/ 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, और सीमा शुल्क अधिनियम 1982, अपील) नियम) के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।

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:-

An intelligence was gathered by the Special Intelligence and Investigation Branch that M/s. DIAT AGRO HOLDING PVT. LTD. , (IEC 0511093748) (*hereinafter referred to as "the exporter" for the sake of brevity*) having its registered office at Balaji Place, 2633-36, Naya Bazar, Delhi, New Delhi had resorted to mis-declaration in terms of description and classification of goods covered vide Shipping Bill No.8929297 dated 05.04.2024. The goods to be exported vide the said shipping bill was declared as "Indian Golden Sella Premium Basmati Rice" and classified under CTH 10063020 (*hereinafter referred to as "the impugned goods" for the sake of brevity*). However, the intelligence suggested that there may be some mis-declaration and concealment of dutiable Parboiled Rice in the consignment. The details of the said shipping bill are as under:

Sr. No.	Shipping Bill No & Date	Description of Goods	Port of Destination	Qty. (MTS)	F.O.B. (INR)
1	8929297 dated 05.04.2024	Indian Golden Sella Premium	Djibouti	230	1,82,38,080/-

Basmati Rice

2. Whereas, based on the above intelligence, consignment covered vide the said SB was intercepted and put on hold on 26.04.2024 for detail examination. Examination of the said consignment was conducted on 29.04.2024 by the officers of SIIB Section in presence of G-card holder of Custom Broker M/s Vishal Shipping Agencies Pvt. Ltd., Mundra at Transworld Terminal CFS, Mundra. The goods were lying in godown of the CFS. The quantity of the goods was tallied with CFS tally sheet, invoice and quantity of the goods was found as declared. Thereafter, bags were opened and examined randomly, wherein the goods were found to be rice on visual appearance.

3. Thereafter, representative samples were drawn and sealed in the presence of the Custom Broker and CFS representative and the same was forwarded to authorised laboratory i.e. CRCL, Kandla for testing.

4. The sample were forwarded to CRCL Kandla vide Test Memo No.004/2024-25 dated 30.04.2024 to ascertain the nature, composition, description, broken percentage of the impugned goods and also to ascertain whether the goods are Basmati Rice, Parboiled Rice or White Rice.

5. CRCL, Kandla in its test report issued vide Lab No.SIIB-888/02.05.2024 dated 10.05.2024 has given the following report:

The sample as received is in the form of pale yellowish translucent rice grains of assorted sized. It has the following constants:

1. *Broken Grains (% by mass) = 0.80*
2. *Damaged / Discol. Grains (% by mass) = Nil*
3. *Chalky Grains (% by mass) = Nil*
4. *Foreign Matter (% by mass) = Nil*
5. *Weevilled Grains (% by mass) = Nil*
6. *Average Length (mm) = 6.86*
7. *Average width (mm) = 1.98*
8. *Length/Width Ratio = 3.49*
9. *Elongation Ratio = 1.69*
10. *Average length of Cooked Rice (mm) = 11.82*
11. *Moisture Content (% by mass) = 11.19*

Based on the physical appearance, forms and analytical findings, it may be considered as Parboiled Rice (Non-Basmati).

6. The test report provided by CRCL, Kandla was communicated to the exporter for his submission/comments. The exporter vide its letter dated 17.05.2024 has requested this office for recheck the given outcome from the concerned LAB.

7. Subsequently, this office vide letter dated 20.05.2024 requested CRCL, Kandla for clarification in respect of the test report vis-à-vis submissions made by the exporter. Also, since the goods were not prohibited/restricted goods, this office vide letter dated 20.05.2024 advised the exporter to avail the option of provisional release of the goods.

8. The exporter submitted a letter dated 24.05.2024 stating that they withdrew their earlier letter dated 17.05.2024 and accepted the result of lab report dated 10.05.2024. The exporter vide its letter dated 24.05.2024 further submitted that their team while making the documents made human error and are apologetic for the same and are ready to pay duty on the value of parboiled rice.

9. The exporter further prayed not to issue any show cause notice or personal hearing in the matter and to take merciful action as its first-time mistake from their end.

10. Whereas, consequent to issuance of Notification No.49/2023 dated 25.08.2023 issued by the CBIC, the Central Government levied export duty @20% on FOB of the Parboiled Rice (CTH - 10063010) by including it in Second Schedule to Customs Tariff Act. However, in the instant case the exporter tried to export the same by way of mis-declaring the same as "Basmati Rice" and classifying the same under CTH 10063020 with an intention to avoid duty payment. The consignment to be exported vide the said SB was found mis-declared and hence found liable for confiscation under section 113(i) of the Customs Act, 1962.

11. The exporter has declared the goods to be exported vide the said SB as "Basmati Rice" and classified the same under CTH 10063020. However, during the investigation, it is found and accepted by the exporter as well that the impugned goods are actually "Parboiled Rice" and not the one declared by the exporter. Also, as the goods were mis-declared, therefore, proper classification as well as re-determination of FOB/assessable value is required to be decided in this case.

12. Valuation of the impugned goods i.e. "Parboiled Rice": As the goods have been found mis-declared in respect of description and CTH, hence, it appears that, the declared FOB value (Rs. 1,82,38,080/-) of the impugned goods is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

13. Whereas, it is found from the data available in the Indian Customs EDI System, during April-2024 there are export of consignments of goods of like kind and quality i.e. Parboiled Rice from Mundra Port are being exported as follows:

No. of S/Bs	Qty. (MTs)	FOB (Rs. in Lacs)	Average Rate / MTs (in Rs.)	Qty. of goods in this case (MTs)	Ass. Value of goods in this case (Rs.)	Applicable export duty @20% of the FOB/AV (Rs.)
<i>i</i>	<i>ii</i>	<i>iii</i>	<i>iv</i>	<i>v</i>	<i>vi (iv x v)</i>	<i>vii (vi x 20%)</i>
27	9383.000	3820.59	40,718.21	230.000	93,65,188/-	18,73,037.6/-

14. Whereas, it appears that, the proper and correct FOB assessable value of the goods Parboiled Rice to be exported by the exporter vide the said SB would come to Rs.93,65,188/- (as calculated above) in view of sub-rule (1) of rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Accordingly, export duty imposed vide Notification No.49/2023 dated 25.08.2023 @20% on FOB on the impugned goods would come to Rs.18,73,037.6/- (as calculated above).

15. The relevant provisions of the Customs Valuation (Determination of Value of Export

Goods) Rules, 2007 are reproduced as under:

Rule 2. Definitions. - (1) In these rules, unless the context otherwise requires, -

- (a) "goods of like kind and quality" means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person; and
- (b) "transaction value" means the value of export goods within the meaning of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962).

Rule 3. Determination of the method of valuation. - (1) Subject to rule 8, the value of export goods shall be the transaction value.

Rule 4. Determination of export value by comparison. — (1) The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the provisions of sub-rule (2).

(2)

Rule 8. Rejection of declared value. — (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with sub-rule (1) of rule 3.

(2)

16. Further, Section 50 of the Customs Act, 1962, which places onus upon the exporter, reads as follows:

SECTION 50. Entry of goods for exportation. -

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

(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.

17. Whereas, it appears that, the exporter by resorting to mis-declaration of the

description/CTH of the impugned goods has failed to comply with the provisions of the Section 50 of the Customs Act, 1962. Further, the exporter has also accepted that the impugned goods to be exported vide the said SB has been mis-declared as 'Basmati Rice' (CTH-10063020) on account of human error while the impugned goods are in fact "Parboiled Rice" (CTH 10063010) as confirmed from the test report. They further confirmed that, they are ready to pay applicable export customs duty (@20% of FOB) on this consignment of Parboiled Rice imposed vide Notification No.49/2023 dated 25.08.2023. They also agreed to pay such duty along with applicable fine and penalty as imposed by the competent Customs authority; that they also do not wish any Show Cause Notice and Personal Hearing in this regard.

18. Whereas, from the above, it is evident that the export of Parboiled Rice (CTH 10063010) attracts export customs duty @20% on FOB. However, the exporter tried to export the same by way of mis-declaring and mis-classifying the same with an intention to avoid payment of export customs duty amounting to Rs.18,73,037.6/- Accordingly, it appears that, the exporter by resorting to mis-declaration and mis-classification has rendered the impugned goods liable for confiscation under Section 113(i) of the Customs Act, 1962. Furthermore, for rendering the goods liable for confiscation, the exporter has also rendered themselves liable for penal action under Section 114(ii) of the Customs Act, 1962.

19. The relevant portion of the Section 113(i) and 114(ii) of the Customs Act, 1962 are as follows:

SECTION 113. Confiscation of goods attempted to be improperly exported, etc. - The following export goods shall be liable to confiscation: -

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

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, -

.....
(iii) *in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.*

20. In view of the above, as the Exporter have already requested for waiver of the show cause notice in the matter, Investigation Report vide F. No.CUS/SIIB/HOC/55/2024-SIIB dated 30.05.2024 was issued by the Deputy Commissioner (SIIB), Customs House, Mundra proposing as under:

(i) The description as well as CTH of the goods to be exported vide Shipping Bill No.8929297 dated 05.04.2024 i.e. "Basmati Rice" (CTH 10063020) are liable to be rejected and required to be re-classified as "Parboiled Rice" under CTH 10063010;

- (ii) The declared FOB value of the goods to be exported vide Shipping Bill No.8929297 dated 05.04.2024 i.e. Rs.1,82,38,080/- is liable to be rejected and the goods are required to be re-assessed at the FOB value of Rs.93,65,188/- and the duty levied on the same as Rs.18,73,037.6/-;
- (iii) Impugned goods covered under Shipping Bill No.8929297 dated 05.04.2024 are liable for confiscation under Section 113(i) of the Customs Act, 1962;
- (iv) The exporter, M/s Diat Agro Holding Pvt. Ltd., (IEC 0511093748) for rendering the impugned goods under confiscation is liable for penal action under Section 114(ii) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING :

21. The Exporter has requested for waiver of Show Cause Notice and Personal Hearing by the adjudicating authority.

DISCUSSION AND FINDINGS:

22. I have carefully gone through the records of the case. The exporter requested for waiver of Show Cause Notice and personal hearing and requested to decide the matter on merit. Thus, I find that the 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.

22.1 The issues to be decided by me are:

- (i) The description as well as CTH of the goods to be exported vide Shipping Bill No.8929297 dated 05.04.2024 i.e. "Basmati Rice" (CTH 10063020) are liable to be rejected and required to be re-classified as "Parboiled Rice" under CTH 10063010;
- (ii) The declared FOB value of the goods to be exported vide Shipping Bill No.8929297 dated 05.04.2024 i.e. Rs.1,82,38,080/- is liable to be rejected and the goods are required to be re-assessed at the FOB value of Rs.93,65,188/- and the duty levied on the same as Rs.18,73,037.6/-;
- (iii) Impugned goods covered under Shipping Bill No.8929297 dated 05.04.2024 are liable for confiscation under Section 113(i) of the Customs Act, 1962;
- (iv) The exporter, M/s Diat Agro Holding Pvt. Ltd., (IEC 0511093748) for rendering the impugned goods under confiscation is liable for penal action under Section 114(ii) of the Customs Act, 1962.

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

22.2 I find that the exporter declared the impugned rice to be exported under Shipping Bill No.8929297 dated 05.04.2024 declared as "**Basmati Rice**" under **CTH-10063020** but, as per the examination done by the SIIB, the consignment of the exported goods is found to be "**Parboiled Rice**" classifiable under **CTH-10063010**. Further, the exporter also accepted the goods to be exported are Parboiled Rice and not Basmati Rice; that their team while making the documents made human error. Therefore, I find that goods to be exported

vide Shipping Bill No.8929297 dated 05.04.2024 declared as Basmati Rice under CTH-10063020 are liable to be rejected and required to be classified under CTH-10063010 as Parboiled Rice.

22.3 I find that as per investigation, the goods have been found mis-declared in respect of description and CTH, hence, the declared FOB cum Assessable Value of Rs.1,82,38,080/- of the impugned goods is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Whereas, further, it is found from the data available in the Indian Customs EDI System, during April-2024, there are export of consignments of goods of like kind and quality i.e. Parboiled Rice from Mundra Port as per following details:

No. of S/Bs	Qty. (MTs)	FOB (Rs. in Lacs)	Average Rate / MTs (in Rs.)	Qty. of goods in this case (MTs)	Ass. Value of goods in this case (Rs.)
1	2	3	4	5	6 (4 x 5)
27	9383.00	3820.59	40,718.21	230.0	93,65,188/-

22.4 In view of above, as per the investigation and data produced before me, I find that the proper and correct FOB assessable value of the goods Parboiled Rice to be exported by the exporter vide the said Shipping Bill would come to Rs.93,65,188/- (as calculated above) in view of sub-rule (1) of rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007. Therefore, I find that the value declared by the exporter in Shipping Bill No.8929297 dated 05.04.2024 is liable to be rejected in view of Rule 8 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 and is required to be re-determined in view of sub-rule (1) of rule 4 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007.

22.5 I find that export duty has been imposed vide Notification No. 49/2023 dated 25.08.2023 issued by the CBIC. The Central Government levied export duty @20% on the Parboiled Rice (CTH - 10063010) by including it in Second Schedule to Customs Tariff Act, 1975. Therefore, I find that while re-assessing the impugned Shipping Bill No. 8929297 dated 05.04.2024, the Export Duty @20% of the FOB Value is liable to be paid by the exporter which has been accepted by the exporter.

22.6 I find that on examination by the SIIB, the goods to be exported are found as mis-declared and mis-classified and the exporter also accepted the goods to be exported are Parboiled Rice and not Basmati Rice, hence, mis-declared and mis-classified and therefore, I find that the goods are liable for confiscation under Section 113(i) of the Customs Act, 1962.

22.7 **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 ¹f²/not exceeding three

times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher;

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.

22.8 I find that the impugned goods to be exported under Shipping Bill No. 8929297 dated 05.04.2024 found to be "**Parboiled Rice**", hence the exporter mis-declared and mis-classified the impugned goods, therefore, the same is liable for confiscation under Section 113(i) of the Customs Act, 1962. Further, I find that the impugned goods i.e. Parboiled Rice are dutiable goods, hence, penalty is imposable in the case under **Section 114(ii)** of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113(i) of the Customs Act, 1962.

23. In view of the 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.8929297 dated 05.04.2024 i.e. "Basmati Rice" under CTH-10063020 and order to be re-classified as "Parboiled Rice" under CTH-10063010;
- (ii) I order to reject the declared assessable/FOB value of the goods to be exported vide Shipping Bill No.8929297 dated 05.04.2024 i.e. Rs.1,82,38,080/- and order to re-assess the same at the assessable/FOB value of Rs.93,65,188/-. Further, export duty @20% amounting to Rs.18,73,037.6/- is also imposable on the above FOB Value of Rs.93,65,188/-;
- (iii) I order to confiscate the Impugned goods covered under Shipping Bill No.8929297 dated 05.04.2024 under Section 113(i) of the Customs Act, 1962. However, since goods are perishable in nature and are not prohibited, I give the option to the exporter to redeem the same against payment of a **Redemption Fine of Rs.9,85,000/- (Rupees Nine lakh Eighty Five thousand only)** under Section 125 of the Customs Act, 1962;
- (iv) I order to impose and recover **Penalty of Rs.1,75,000/- (Rupees One lakh Seventy Five thousand only)** on the exporter, M/s Diat Agro Holding Pvt. Ltd., (IEC 0511093748), Balaji Place, 2633-36, Naya Bazar, Delhi, New Delhi under Sections 114(ii) of the Customs Act, 1962.

19. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962

and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
Mukesh Khatri
(Mukesh Khatri)
Additional Commissioner (EA)
Date: 04/06/2024 6:29:55
Customs House, Mundra

F.No.CUS/ASS/MISC/648/2024-EA

Dated:-04-06-2024

BY SPEED POST

To,
M/s Diat Agro Holding Pvt. Ltd.,
(IEC 0511093748),
Balaji Place, 2633-36, Naya Bazar, Delhi, New Delhi-

Copy to:- (1) The Deputy Commissioner(TRC) RRA Review Section EDI SHB Guard File.

