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	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KACHCHH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62
A. File No.	: CUS/DOCK/BTT/121/2024-Docks Examn-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/156/2024-25 dated 09.10.2024
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 09.10.2024/10-10-2024
E. Show Cause Notice No. & Date	: SCN and PH Waiver
F. Noticee(s)/Party/ Exporter	: M/s H R Exports Private Limited, 2646, 1st Floor, Gali Raghunandan, Naya Bazar, Delhi-110006
G. DIN	: 20241071MO000000516E

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 ऊँटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क अन्य के, अधिनियम शुल्क सीमा और 1982, अपील) नियम। चाहिए जाना किया पालन का मामलों सभी तहत के प्रावधानों सभी

While subMithing 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 माग 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:

M/s H R Exports Private Limited, 2646, 1st Floor, Gali Raghunandan, Naya Bazar, Delhi-110006 having IEC No. 0510011896, have filed Shipping Bill No. 1103001 dated 23.05.2024 through their CHA-M/s Daksh Shipping and Logistics for export of goods declared as "Basmati Rice" under CTH-10063020.

2. The Docks Officer after examination found that the goods are not as per declaration. As per instruction received from DC/Export, RSS were drawn vide Test Memo No. 913 dated 19.06.2024 and forwarded the same to CRCL, Kandla for testing. CRCL, Kandla vide their Report No. 2843 dated 01.07.2024 concluded that *"based on the physical appearance, forms and analytical finding, it may be considered as mixed rice of various type of rice grains and it is other than Basmati Rice.* The details of Shipping Bill and corresponding Test Report are as under:

Sr. No.	Shipping Bill No. & Date	Net Wt.	Test Report No. & Date	FOB Declared in SB (in Rs.)	Summary of Test Result
1.	1103001 dated 23.05.2024	46 MTs	2843 dated 01.07.2024	36,49,824/-	it may be considered as mixed rice of various type of rice grains and it is other than Basmati Rice
TOTAL				36,49,824/-	

3. The exporter vide letter dated 27.08.2024 requested for Back to Town of the cargo as their buyer has cancelled the order.

4. The goods declared as "Basmati Rice" were found mis-declared in terms of description as per test report dated 01.07.2024. As per test report mentioned in Table-I of Para 2, the goods are "**Other than Basmati Rice**" instead of declared goods i.e. "Basmati Rice", which are correctly classifiable under CTH 10063090 instead of declared CTH 10063020.

4.1. As per Customs Tariff Act, 1975, CTH-10063090 covers Other Rice i.e. Rice other than, Parboiled and Basmati Rice. The relevant portion of the Customs Tariff is reproduced as under:

1006	RICE
1006 10	- Rice in the husk (paddy or rough):
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.

4.2. Further, as per Notification No. 20/2023 dated 20.07.2023 issued by DGFT; the export of "Non-Basmati White Rice (Semi-milled or wholly-milled rice, whether or not polished or glaze: Other)" under CTH-10063090 is prohibited w.e.f. 20.07.2023. The relevant portion of above notification is re-produced as under:-

To be Published in the Gazette of India Extraordinary Part II Section 3 Sub Section 1

S. N. Letters No. 20
New Delhi Dated 20th June 1944

Subject: Notice of intent to file a complaint against Plaintiff and Defendants and Plaintiff's and Defendants' responses thereto. The Plaintiff's and Defendants' responses are attached.

HTS Codes	Description	Export Rule	Review & Export Policy
5008.30.00	Non-fresh all white rice. Semimilled or semi-polished rice, whether or not dehusked or glazed. Other.	Free	Prohibited

whereas, according to Section 10, the Notification on the ship has commenced before the port of departure, where the shipping bill is filled and vessels have already been loaded or arrived and anchored in transit points and their rotation number has been all stated before this Notification of departure, or where the shipping bill is filled and the vessel has already been loaded or arrived in transit points and the rotation number has been all stated before this Notification of departure, the shipping bill shall be valid for the voyage.

5. The exporter has declared the goods to be exported vide the said SB as "Basmati Rice" and classified the same under CTH-10063020. However, as per Test Report, it is found and accepted by the exporter as well that the impugned goods are actually "Other than Basmati Rice" and not the one declared by the exporter. Also, as the goods were mis-declared, therefore, proper classification is required to be decided in this case.

6. 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.

7. 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) while the impugned goods are in fact "Other than Basmati Rice" (CTH 10063090) as confirmed from the test report.

8. Whereas, from the above, it is evident that the export of Other Rice (CTH 10063090) is prohibited w.e.f. 20.07.2023, as per Notification No. 20/2023 dated 20.07.2023 issued by DGFT. 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(d) & 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(i) of the Customs Act, 1962.

9. The relevant portion of the Section 113(d), 113(i) and 114(i) 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 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.

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];
- (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.

10. In view of the above, it appears that:

- (i) The description as well as classification of the impugned goods, attempted to be exported mentioned under Shipping Bill No. 1103001 dated 23.05.2024 as "Basmati Rice" (CTH-10063020) are liable to be rejected and required to be reclassified as "Other Rice" under CTH 10063090;
- (ii) Impugned goods covered under Shipping Bill No. 1103001 dated 23.05.2024 having FOB value 36,49,824/- are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962;
- (iii) The exporter, M/s H R Exports Private Limited, having IEC No. 0510011896 for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING:

11. The Exporter has requested for waiver of Show Cause Notice and Personal Hearing by the adjudicating authority vide letter dated 04.10.2024. The Exporter also requested for Back to Town of the goods.

DISCUSSION AND FINDINGS:

12. 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.

12.1. The issues to be decided by me are:

- (i) The description as well as classification of the impugned goods, attempted to be exported mentioned under Shipping Bill No. 1103001 dated 23.05.2024 as "Basmati Rice" (CTH-10063020) are liable to be rejected and required to be reclassified as "Other Rice" under CTH 10063090;

- (ii) Impugned goods covered under Shipping Bill No. 1103001 dated 23.05.2024 having FOB value 36,49,824/- are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962;
- (iii) The exporter, M/s H R Exports Private Limited, having IEC No. 0510011896 for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) of the Customs Act, 1962.

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

12.2. I find that the exporter declared the impugned rice to be exported under Shipping Bill No. 1103001 dated 23.05.2024 declared as "**Basmati Rice**" under **CTH-10063020**, but as per the Test Report, the consignment of the exported goods is found to be "**Other Than Basmati Rice**" due to presence of mixed rice of various type of rice grains and same classifiable under **CTH-10063090**.

12.3. In view of above, as per the test report and data produced before me, I find that the proper classification of goods "Other Rice" is 10063090 instead of declared CTH 10063020 for "Basmati Rice".

12.4. I find that the goods attempted to be exported are found as mis-declared and mis-classified and the exporter also accepted the goods to be exported are Other Rice and not Basmati Rice, and therefore, I find that the goods are liable for confiscation under Section 113(d) & 113(i) of the Customs Act, 1962.

12.5. **I also find that Section 114 of the Customs Act, 1962 stipulates that:**

Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ¹[²not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

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

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

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

whichever is the greater.

12.6. I find that the impugned goods to be exported under Shipping Bill No. 1103001 dated 23.05.2024 found to be "**Other Rice**", hence the exporter has mis-declared and mis-classified the impugned goods to avoid the prohibition, and therefore, the same is liable for confiscation under **Section 113(d) & 113(i)** of the Customs Act, 1962. Further, I find that the impugned goods i.e. "**Other Rice**" are Prohibited goods, hence, penalty is imposable in the case under **Section 114(i)** of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.

13. 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. 1103001 dated 23.05.2024 i.e. "Basmati Rice" under CTH-10063020 and order to be re-classified as "Other Rice" under CTH-10063090;
- (ii) I order to confiscate the Impugned goods covered under Shipping Bill No. 1103001 dated 23.05.2024 having FOB value 36,49,824/- under Section 113(d) & 113(i) of the Customs Act, 1962. However, I give the option to the exporter to redeem the same for Back to Town against payment of a Redemption Fine of Rs. 6,00,000/- (Rupees Six Lakhs only) under Section 125 of the Customs Act, 1962;
- (iii) I order to impose and recover Penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) on the exporter under Sections 114(i) of the Customs Act, 1962.

14. 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 KUMARI

ADDITIONAL DATE: 10/10/2024 15:02

ADC/JC-I/O/o Pr Commissioner-Customs-Mundra

F.No. CUS/DOCK/BTT/121/2024-Docks

Date : 10-10-2024

5547

BY SPEED POST

To,
M/s H R Exports Private Limited,
2646, 1st Floor, Gali Raghunandan,
Naya Bazar, Delhi-110006.

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

Received on behalf of CB M/s Daksh Shipping Services, Gidham.

Amandeep
-10/10/24

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