

	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.	:	GEN/ADJ/ADC/1106/2022-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/36/2023-24
C. Passed by	:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order passed	:	04.05.2023
E. Date of order issued	:	16.05.2023
F. Show Cause Notice No. & Date	:	S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022
G. Noticee(s)/Party/ Importer	:	M/s. Rina Brothers), Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No.0808014391.

DIN-20230571MO0000566225

- यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

**“ सीमा शुल्क आयुक्त (अपील), मुंद्रा
चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”**

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”**

- उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।

Appeal shall be filed within sixty days from the date of communication of this order.

- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

- उक्त अपील की एक प्रति और A copy of the appeal, and

- इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

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

- अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

- अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 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.

- 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.

Sub.:- SCN No. S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 issued to M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No. 0808014391.

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Brief facts of the Case:-

M/s. Rina Brothers), Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No.0808014391 (*herein after referred to as "the importer"*) filed Bill of Entry No.4299516 dated 12.06.2021 (*herein after referred to as "said Bill of entry"*) through their CHA-M/s Meenu Rathore (AERPD3810JCH007) for import of "Watermelon Seeds for Consumption Purpose" under CTH 12077090.

2. An intelligence vide letter dated 02.07.2021 was disseminated by the DRI, Ahmedabad Zonal Unit to this office that "Melon Seeds: Others" falling under CTH 12077090 are being imported from Sudan even after restriction imposed by the Directorate General of Foreign Trade (DGFT) vide Notification No.03/2015-2020 dated 26.04.2021. Importer has furnished Bill of Lading by mentioning date of lading prior to the date of the above said DGFT notification whereas intelligence reveals that the containers mentioned in the said Bill of Lading were loaded on ship at Load Port after the date of DGFT notification. Hence, it appears that importer has furnished manipulated bill of lading with intention to clear the restricted goods without following the condition imposed by the above said DGFT notification.

2.1. Intelligence indicated that Bills of Lading No.208805317 dated 15.04.2021 was furnished by an importer namely M/s Rina Brothers (IC: - 0808014391), Sardar Chowk, Station Road, Unjha, Mehsana, Gujarat-384170 for import of "Watermelon Seeds for consumption purpose" under CTH 12077090 vide Bill of Entry No.4299516 dated 12.06.2021 at port of import i.e. Mundra. Intelligence indicated that as per Container Tracking on web portal, 05 containers were covered in the above Bill of Lading and containers were loaded on ship on 04.05.2021, 10.05.2021 and 11.05.2021 at port of export. i.e. "Port Sudan" whereas date of bill of lading furnished is 15.04.2021 (i.e. before loading of containers on ship).

3.1 During the course of investigation, statements of the following persons were recorded:

- i. Statement dated 08.07.2021 of Mrs. Mariamma Kurian, Manager of M/s Meenu Rathore, Gandhidham
- ii. Statement dated 08.08.2021 of Shri Shantilal Hariram Gajra, Proprietor of M/s Vansh Logistics, Gandhidham
- iii. Statement dated 14.07.2021 and 23.07.2021 of Shri Malav Rajendrabhai Shah, General Manager cum Authorized Person of M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170.

3.2. During the course of investigation, the importer, M/s Rina Brothers vide letter dated 28.07.2021 requested to release the containers as per Section 49 of the Customs Act, 1962 and the Deputy Commissioner (SIIB) granted the permission for the same. Further, as the imported goods i.e. Watermelon Seeds were of perishable nature, **the same were provisionally released on execution of Bond of 100% value and Bank Guarantee of Rs.5,00,000/- and subject Bill of Entry No.4299516 dated 12.06.2021**

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was assessed provisionally on 07.01.2022.

Outcome of the investigation:

4.1. It is evident from above that importer M/s Rina Brothers filed Bill of Entry No.4299516 dated 12.06.2021 through their CHA-M/s Meenu Rathore (AERPD3810JCH007) for import of "Watermelon Seeds for Consumption Purpose" under CTH 12077090 by deliberately mis-declaring the Bills of Lading dated 15.04.2021, though, the actual date of Bill of Lading was 30.05.2021 to import the restricted goods even after restriction imposed by DGFT vide Notification No.3/2015-20 dated 26.04.2021 and without following the Policy Condition of "Section-II, Vegetable Products" of Schedule-I (Import Policy) in respect of import of "Melon Seeds – Other".

4.2. It is also evident from the documents available on record that the goods were loaded/boarded on the vessel at Sudan Port after 26.04.2021, i.e. after the date of issuance of Notification No.3/2015-20 dated 26.04.2021 which imposed restriction of import of Melon Seeds after 26.04.2021. The importer, M/s Rina Brothers also in their statement agreed with fact that the date of shipment was after the date of imposition of restriction of import of Melon Seeds on 26.04.2021. Further, the claim of the importer that they have already initiated the partial payment during January-2021; that the date of Health Quarantine Certificate of Sudan Port is of 14.04.2021 and containers were handed over to the shipping line on 15.04.2021, before 26.04.2021, does not make any point for import of goods after restriction imposed by DGFT vide Notification No.3/2015-20 dated 26.04.2021, because, as discussed above, the date of reckoning of import as per Handbook of Procedure 2015-20, is the date of Bill of Lading and not the date of payment, date of Health Quarantine Certificate or date of handing over the containers to the shipping line.

4.3. The importation of impugned goods is restricted as per import policy issued by DGFT. Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as FT (D&R) Act, 1992) states that all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of FT (D&R) Act, 1992 shall be deemed to be prohibited under Section 11 of the Customs Act, 1962. Thus, if goods are restricted or regulated for import or export, they are prohibited goods even if there is no complete prohibition and in the instant case the imported goods are restricted as per import policy and imported without any licence issued by DGFT, thus, are "prohibited goods". Being the prohibited goods the same appears to be liable for confiscation under Section 111(d) of the Customs Act, 1962. As, there were reason to believe as stated above that the said goods were liable for confiscation under section 111(d) of the Customs Act, 1962, therefore, the impugned goods imported vide Bill of Entry No.4299516 dated 12.06.2021 were seized under Seizure Memo dated 14.07.2021 handed over to the representative of Landmark CFS, Mundra for safe custody under Supratnama dated 14.07.2021. Further, as the goods are liable for confiscation the importer is also liable for Penalty under Section 112 of the Customs Act, 1962 and 114AA of the Customs Act, 1962 as the importer attempted to import

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restricted goods even after having the knowledge of the same by mis-declaring the date of Bill of Lading as 15.04.2021 which was actually 30.05.2021 to show that the impugned goods were shipped before the date of imposition of restriction by DGFT Notification date 26.04.2021.

4.4. In this case, CHA-M/s Meenu Rathore (AERPD3810JCH007), Office No.1 & 2, 2nd Floor, Aastha Complex, Plot No.17, Ward No.17B, Opp. Kidzee School, Gurukul, Gandhidham-370201 have not followed due diligence in respect of importation of goods which were restricted and filed the impugned Bill of Entry even after having the knowledge that the same were loaded after the restriction imposed by the DGFT on 26.04.2021; hence failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018), thus, appears to be liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018.

4.5. Further, M/s Mearsk Line India Pvt. Ltd., PD Plaza, 1st Floor, Plot No.3, Sec-9A, Tagore Road, Gandhidham-370201 filed the BL date as 15.04.2021 even after knowing the fact that the actual date of BL issued from M/s Maersk Shipping Co. Ltd., Sudan was 30.05.2021, hence they made mis-declaration of the same and are liable for penalty under Section 117 of the Customs Act, 1992.

4.6. Further also, M/s Vansh Logistics, Office No.110, Risabh Corner, Plot No.93, Sec-08, Near KDBA Gym Khana, Tagore Road, Gandhidham-3700201 submitted all the documents related to the import of impugned restricted goods to CHA-M/s Meenu Rathore even after having the knowledge that the same were loaded after the restriction imposed by the DGFT on 26.04.2021, hence they made themselves liable for penalty under Section 117 of the Customs Act, 1992.

5. In view of the foregoing paras, the noticee M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No.0808014391 was called upon to Show Cause vide SCN no.-S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 to the Additional Commissioner, Customs House Mundra, 5B, Port User Building, Mundra Port, Mundra (Gujarat) as to why:

- i. The impugned goods imported by them under Bill of Entry No.4299516 dated 12.06.2021 valued at Rs.51,99,271/- (Rupees Fifty One lakh, Ninety Nine Thousand, Two Hundred and Seventy One only), should not be held liable for confiscation under Section 111(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20;
- ii. Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962;
- iii. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962;

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6.1 In view of forgoing paras, CHA-M/s Meenu Rathore (AERPD3810JCH007), Office No.1&2, 2nd Floor, Aastha Complex, Plot No.17, Ward No.17B, Opp. Kidzee School, Gurukul, Gandhidham-370201 was called upon to Show Cause vide SCN no. -S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 to the Additional Commissioner, Customs House Mundra, 5B, Port User Building, Mundra Port, Mundra (Gujarat) within 30 days of this notice as to why penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

6.2 In view of forgoing paras, M/s Mearsk Line India Pvt. Ltd., PD Plaza, 1st Floor, Plot No.3, Sec-9A, Tagore Road, Gandhidham-370201 was called upon to Show Cause vide SCN no. -S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 to the Additional Commissioner, Customs House Mundra, 5B, Port User Building, Mundra Port, Mundra (Gujarat) within 30 days of this notice as to why penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

6.3. In view of forgoing paras, M/s Vansh Logistics, Office No.110, Risabh Corner, Plot No.93, Sec-08, Near KDBA Gym Khana, Tagore Road, Gandhidham-3700201 was called upon to Show Cause vide SCN no. -S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 to the Additional Commissioner, Customs House Mundra, 5B, Port User Building, Mundra Port, Mundra (Gujarat) within 30 days of this notice as to why penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

DEFENCE SUBMISSION

7. The Noticee & co-noticees have not filed any defence reply till date to the instant Show Cause Notice.

PERSONAL HEARING

8. By following the Principal of Natural Justice, an opportunity to represent themselves (the notices) PH were granted on 02.02.2023, 16.02.2023 & 02.03.2023. The noticee wise correspondences made in this regard are as follows:

8.1. M/s. Rina Brothers: - A letter received from M/s. Rina Brothers dated 02.02.2023 wherein M/s. Rina Brothers submitted that they did not want personal Hearing in this matter.

8.2. On behalf of M/s. Meenu Rathore & M/s. Vansh Logistics none appeared on personal hearing on 02.02.2023 & 16.02.2023. In the event of non-appearance, a last opportunity to attend the personal hearing was fixed on **02.03.2023**, but none appeared on behalf of the Noticee. In the event of non-attendance by Noticee, the instant case is to be adjudicated *ex-parte* basis, on the basis of available document on record.

8.3. M/s. Mearsk Line India Pvt. Ltd.:- None appeared on 02.02.2023 on

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behalf of M/s. Mearsk Line India Pvt. Ltd. but on next appointed dated of personal hearing i.e.-16.02.2023 a letter dated 27.01.2023 received along with written submissions from an Advocate Shri P. Giridharan on behalf of M/s. Mearsk India Pvt. Ltd. and requested to attend the PH virtually and on 17.02.2023 attended the PH virtually and reiterated the written submission and pleaded for following points:

(i) The authorized person of the Line was not summoned and given opportunity before issuance of SCN dated 30.11.2022.

(ii) The SCN was grossly misconstrued leading to the erroneous conclusion that there was mis-declaration of the date in Bill of Lading. In plain perusal of the B/L it is clear that –

Date of receiving of goods-15.04.2021

Date of issuance of B/L-30.05.2021.

(iii). with their contention that the date of effecting shipment would be the same as date of receiving the shipment, in support of this they referred a case of Swati Growth Funds Ltd. Vs. Collector of Customs, Madras (1995 (79) ELT 247 (Tri-Mad)).

(iv). Further, they had not received full of shipping instruction from the shipper until 28.04.2021 and there was also an ulterior issue such as technical & infrastructural difficulty in loading port for the shipping line.

DISCUSSION AND FINDINGS

9. I have carefully gone through the Show Cause Notice dated 30.11.2022 as well as the available records of the case. I find that in the present case ample opportunities have been given to the Noticee to remain present for personal hearing. The adjudication process cannot go indefinitely waiting for the Noticee to turn up for personal hearing. Therefore, I find that the principle of Natural Justice, as prescribed in Section 122A of the Customs Act, 1962 has been followed. Hence, I proceed to take up the matter on the basis of facts & documentary evidences available with the department

10. I have carefully gone through the records of the case, including the Show Cause Notice dated 30.11.2022, the submissions made during the course of virtual Hearing and I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided: -

(i) Whether the impugned goods imported by the importer M/s. Rina Brothers, under Bill of Entry No.4299516 dated 12.06.2021 valued at Rs.51,99,271/- (Rupees Fifty One lakh, Ninety Nine Thousand, Two Hundred and Seventy One only), should not be held liable for confiscation under Section 111(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure, 2015-20 or otherwise.

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(ii) Whether penalty should not be imposed on the importer under Section 112(a) of the Customs Act, 1962 or otherwise;

(iii) Whether penalty should not be imposed on the importer under Section 114AA of the Customs Act, 1962 or otherwise;

- iv. Whether penalty should not be imposed on the CHA-M/s. Meenu Rathore (AERPD3810JCH007), under Section 117 of the Customs Act, 1962 or Otherwise.
- v. Whether penalty should not be imposed on the Shipping Line M/s Mearsk Line India Pvt. Ltd., under Section 117 of the Customs Act, 1962 or Otherwise.
- vi. Whether penalty should not be imposed on the clearing agent of the goods M/s Vansh Logistics, under Section 117 of the Customs Act, 1962 or Otherwise.

10.1 I find that the Directorate General of Foreign Trade (DGFT) in exercise of powers conferred by Section 3 read with Section 5 of the Foreign Trade (Development and Regulation) Act, 1992 read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015- 2020 as amended from time to time, amended the import policy of Melon Seeds under EXIM Code 12077090 of Chapter 12 of ITC (HS), 2017, Schedule-I (Import Policy) vide Notification No.3/2015-20 dated 26.04.2021 from “Free” to “Restricted” subject to the revised policy condition as detailed under:-

HS Code	Description	Existing Import Policy	Revised import policy	Existing Policy Condition	Revised Policy Condition
12077090	Melon Seeds - Other	Free	Restricted	—	Imports subject to Policy Condition (4) of the Chapter

Further, the Policy Condition-4 of Section-II, Vegetable Products of Schedule-I (Import Policy) is as under:

“Import permitted for sowing without a licence subject to the new Policy on Seed Development, 1988 and in accordance with import permit granted under Plant Quarantine (Regulation of Imports into India) Order, 2003.”

10.2 I further find that whereas the “Date of Reckoning of Import” as per Para No. 2.17 read with Para No. 9.11 of Handbook of Procedure 2015-20 of DGFT is decided with reference to date of shipment i.e. the date affixed on the “Bill of Lading” in case of Transportation “By Sea”. The Para No. 2.17 and Para No. 9.11 of Handbook of Procedures 2015-20 of DGFT are reproduced here under:

2.17 Date of reckoning of Import/Export

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(a) Date of reckoning of import is decided with reference to the date of shipment/dispatch of goods from supplying country as given in paragraph 9.11 of Handbook of Procedures and not the date of arrival of goods at an Indian port.

9.11 Date of shipment/Dispatch is respect of Imports: Date of shipment/dispatch for import will be reckoned as under:-

Sr. No.	Mode of Transportation	Date of Shipment/Dispatch
(i)	By Sea	The date affixed on the Bill of Lading

10.3 I further find that, the relevant portion in the DGFT's Notification No. 05/2015-2020 dated 25th April, 2018 amended Para 1.05(b) relating to Transitional Arrangements under Foreign Trade Policy 2015-2020 on Transitional Arrangements as under:

1.05: Transitional Arrangements

Existing Para 1.05 (b)	Revised Para 1.05 (b)
<p>(b) In case an export or import that is permitted freely under FTP is subsequently subjected to any restriction or regulation, such export or import will ordinarily be permitted, notwithstanding such restriction or regulation, unless otherwise stipulated. This is subject to the condition that the shipment of export or import is made within the original validity period of an irrevocable commercial letter of credit, established before the date of imposition of such restriction and it shall be restricted to the balance value and quantity available and time period of such irrevocable letter of credit. For operationalizing such irrevocable letter of credit, the applicant shall have to register the Letter of Credit with jurisdictional Regional Authority (RA) against computerized receipt, within 15 days of the imposition of any such restriction or regulation.</p>	<p>(b) Item wise Import/ Export Policy is delineated in the ITC (HS) Schedule I and Schedule II respectively. The importability/exportability of a particular item is governed by the policy as on the date of import/export. The date of import/ export is defined in para 2.17 of HBP, 2015-20. Bill of Lading and Shipping Bill are the key documents for deciding the date of import and export respectively. In case of change of policy from 'free' to 'restricted/prohibited/state trading' or 'otherwise regulated', the import/export already made before the date of such regulation/restriction will not be affected. However the import through High Sea sales will not be covered under this facility.</p> <p>Further, the import/export on or after the date of such regulation/restriction will be allowed for importer/exporter has a commitment through Irrevocable Commercial Letter of Credit (ICLC) before the date of imposition of such restriction/ regulation and shall be limited to the balance quantity, value and period available in the ICLC. For operationalizing such ICLC, the applicant shall have to register the ICLC with jurisdictional RA against computerized receipt within 15 days of imposition of any such restriction/regulation.</p>

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<p><i>Whenever, Government brings out a policy change of a particular item, the change will be applicable prospectively (from the date of Notification) unless otherwise provided for.</i></p>
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10.4 From the above facts, it has become crystal clear that the importation of impugned goods is restricted as per import policy issued by DGFT. Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as FT (D&R) Act, 1992) states that all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of FT (D&R) Act, 1992 shall be deemed to be prohibited under Section 11 of the Customs Act, 1962. Thus, if goods are restricted or regulated for import or export, they are prohibited goods even if there is no complete prohibition and in the instant case the imported goods are restricted as per import policy and imported without any licence issued by DGFT, thus, are “prohibited goods”.

10.5 In this context, I further find that Shri Malav Rajendra Bhai Shah, General Manager cum Authorized person of M/s. Rina Brothers, Gujarat in his statement dated 14.07.2021 & 23.07.2021 has admitted that they were aware of the Import Export Policy for importation of Watermelon Seeds in India and very well aware of the fact that Import of Watermelon Seeds had been restricted vide DGFT Notification No.-03/2015-20 dated 26.04.2021. The matter was being investigated by the officers of SIIB and they had submitted an SCN F.no.-S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 wherein they had concluded that the importer had failed to ensure compliance with respect to the restriction imposed through the import policy. I further find the importer vide their letter dated 02.02.2023, had requested to decide the case without any personal hearing and show cause notice and requested to adjudicate the case as per the provisions of Customs Act.

10.6 I further find that the importation of impugned goods is restricted as per import policy issued by DGFT. Section 3(3) of Foreign Trade (Development and Regulation) Act, 1992 (hereinafter referred to as FT (D&R) Act, 1992) states that all goods which are prohibited, restricted or regulated (subject to exception, if any) for import or export, by an order issued under Section 3(2) of FT (D&R) Act, 1992 shall be deemed to be prohibited under Section 11 of the Customs Act, 1962. Thus, if goods are restricted or regulated for import or export, they are prohibited goods even if there is no complete prohibition and in the instant case the imported goods are restricted as per import policy and imported without any license issued by DGFT, thus, are “prohibited goods”.

Section 111(d) of the Customs Act, 1962 reads thus:

(d) any goods which are Indian customs imported or attempted to be imported or

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are brought within the waters 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;

The said importer has failed to ensure compliance with respect of the restriction imposed through the Import Policy. Further, any prohibition referred to under section 111(d) of the Customs Act, 1962 applies to every type of prohibition. That prohibition may be complete or partial. It is very settled law that any restriction on import or export is to an extent a "Prohibition" and therefore the expression "any Prohibition" in Section 111(d) of the Customs Act, 1962 includes restriction. Restriction is one type of prohibition if policy condition is not fulfilled/complied. In the instant case, the goods do not fulfil the condition for their import as they violate the condition imposed by Import Policy as discussed above. Therefore, it appears that the acts and omissions of the importer have rendered the said goods liable for confiscation under section 111(d) of the Customs Act, 1962. Hence, I conclude that importer has failed to ensure compliance with the restriction or prohibition under rules, law and Customs Act, 1962 and failed to discharge obligation cast upon them and therefore, I find that importer has rendered themselves liable for penal action under Section 112(a)(i) of the Customs Act, 1962.

10.7. The above conclusion as regards the liability to confiscation is fortified by the fact that the main Noticee, namely, M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC no.-0808014391 have not filed any reply to the Show Cause Notice. I further find that the importer M/s. Rina Brothers have stated in writing that they do not want personal hearing in the instant case. Under these circumstances, I have to hold that the Importer M/s. Rina Brothers, have nothing to say on the issue of liability to confiscation in respect of the goods involved in the instant case.

11. Now, I proceed to consider the proposal of penalty under Section 114AA of the Customs Act, 1962 against the importer. I find that Shri Malav Rajendra Bhai Shah, General Manager cum Authorized person of M/s. Rina Brothers, Gujarat in his statement dated 14.07.2021 & 23.07.2021 had admitted that the importer attempted to restricted goods even after having the knowledge of the same by mis-declaring the date of Bill of Lading as 15.04.2021 which was actually 30.05.2021 to show that the impugned goods were shipped before the date of imposition of restriction by DGFT Notification dated 26.04.2021.

12.1. In this regard, I find that the provisions of Section 114 AA of the Customs Act, 1962 read as below:-

114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or

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document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

11.2. In view of the above it is clear that the importer knowingly or intentionally had changed the date of BL to 15.04.2021 from 30.05.2021 so as to prevent the imposition of the restriction of Import. In the instant case, the ingredient of willful mis-declaration or suppression of facts by the importer has been clearly established as discussed in the foregoing paras and hence, I find that this is a fit case for imposition of penalty in terms of Section 114AA of the Customs Act, 1962.

12. Now for consideration of Penalty under Section 117 of Customs Act, 1962. In this regard, I find that the provisions of Section 117 of the Customs Act, 1962 read as below :-

Section 117 of Customs Act, 1962 stipulates that any person who contravenes any provisions of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding [four lakh rupees]

12.1. I find that, in the case of CHA M/s. Meenu Rathore (AERPD3810JH007), Gandhidham, Statement dated 08.07.2021 of Mrs. Mariamma Kurian, Manager of M/s Meenu Rathore wherein she stated that they were aware about the Import Export Policy for importation of Watermelon seeds. The DGFT vide Notification No.03/2015-20 dated 26.04.2021 has Restricted the Melon Seeds from Free. Hence, had not followed due diligence in respect of importation of goods which were restricted filed the impugned Bill of Entry even after having the knowledge that the same were loaded after the restriction imposed by the DGFT on 26.04.2021; hence failed to comply with the provisions of the Custom Broker Licensing Regulations, 2018 (CBLR, 2018), thus, I find that they are liable for penal action under Section 117 of the Customs Act, 1962 for contravention of CBLR, 2018.

13. Further, I find that in the case of M/s Vansh Logistics, M/s. Vansh Logistics had submitted all the documents related to the import of impugned restricted goods to CHA-M/s Meenu Rathore even after having the knowledge that the same were loaded after the restriction imposed by the DGFT on 26.04.2021, hence they rendered themselves liable for penalty under Section 117 of the Customs Act, 1992.

14. I find that the Show Cause Notice seeks to impose a penalty under Section 117 of Customs Act, 1962 on M/s Mearsk Line India Pvt. Ltd., PD

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Plaza, 1st Floor, Plot No.3, Sec-9A, Tagore Road, Gandhidham-370201. I find that Shree P. Giridharan, Advocate who represented on behalf of M/s. Mearsk Line India Pvt. Ltd. Appeared during the personal hearing and made submissions which have been reproduced in full in paragraph number 8 hereinabove. I proceed to discuss these submissions made by the said M/s Mearsk Line India Pvt. Ltd., PD Plaza, 1st Floor, Plot No.3, Sec-9A, Tagore Road, Gandhidham-370201 through their Advocate.

14.1.0 They have contended that the authorized person of the (Shipping) Line was not summoned and given opportunity before issuance of SCN dated 30.11.2022.

14.1.1 In this regard, in my view, the single fact that said Advocate has appeared for the personal hearing to state their stand on the allegation raised in the Show Cause Notice against M/s Mearsk Line India Pvt. Ltd. is sufficient to hold that no prejudice has been caused to the said M/s Mearsk Line India Pvt. Ltd. This is because the said Advocate's submissions are being discussed in this Order. I now proceed to discuss the contentions raised by the said Advocate, Shree P. Giridharan.

14.2.0 They contended that the SCN was grossly misconstrued leading to the erroneous conclusion that there was mis-declaration of the date in Bill of Lading. According to them, in plain perusal of the B/L it is clear that

—

Date of receiving of goods-15.04.2021

Date of issuance of B/L-30.05.2021.

14.2.1 It is the Advocate's contention that the date of effecting shipment would be the same as date of receiving the shipment, in support of this contention, they rely upon the case law, namely, Swati Growth Funds Ltd. Vs. Collector of Customs, Madras (1995 (79) ELT 247 (Tri-Mad)).

14.2.2 Before going into the contentions mentioned in the above two paragraphs, it must be kept in mind that these contentions go into the merits of the case, that is, these contentions relates to the issue of liability of confiscation of the goods involved in the instant case. I have already discussed this issue in detail hereinabove. For this reason alone, I may hold that the contentions by the said M/s Mearsk Line India Pvt. Ltd have no merit.

14.2.3. Further, as regards the case law, Swati Growth Funds Ltd. Vs.

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Collector of Customs, Madras (1995 (79) ELT 247 (Tri-Mad), relied upon by the said M/s Mearsk Line India Pvt. Ltd, I find this Case law offers no assistance to them at all. In fact, the said Decision of the Tribunal aids the case of the Department. This is explained in the succeeding paragraphs herein.

14.2.4 I find that in the very same case law, Swati Growth Funds Ltd. Vs. Collector of Customs, Madras (1995 (79) ELT 247 (Tri-Mad), the relevant portion of Paragraph number (6), the Hon'ble Tribunal has observed as follows :-

The Hon'ble Supreme Court in the judgment referred to above has clearly held that the transitional provision being in the nature of an exception has to be interpreted strictly. In our view the definition of the term 'date of shipment' given in the Handbook of Procedure for the Policy 1992-97 does not in any way come to the rescue of the appellants. All that it envisages is as to what is to be considered as the date of shipment/despatch. So far as transport by sea is concerned the said date is referred to as the date on the Bill of Lading. In respect of transport of the goods by air or by road the date is the date on the Airway Bill provided this represents the date on which the goods left the last airport in the country from which the import is effected and in the case of despatch by road in the case of land-locked countries the date of despatch of the goods by rail or road on through consignment basis. In the case of the modes other than by sea the stipulation is clear that it is the date on which the goods actually moved by air or by rail for outward journey. There is no reason why similar date should not be considered as relevant date of shipment in case of despatch by sea. The Policy makers could not have intended different considerations for despatch by sea as it would make the provision anomalous so far as the date of shipment is concerned for the purpose of validity period of the licence, when the goods were despatched by sea. A particular buyer may have the goods kept for long periods before getting them placed on board with the agents of the carriers, which was the case in the present transaction as the goods had been kept by the agent of the carriers from 7-11-1993 onwards and get them shipped at convenience after having obtained

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a receipt of the goods by way of Bill of Lading by the agent of the carrier even though the goods were not even ready for being loaded on the ship, as the ship was to come much later for the voyage for the carriage of the goods. As it is the term 'Bill of Lading' has not been defined and we have to only see as to which Bill of Lading will reflect the actuality of shipment of the goods. Bill of Lading as has been brought out in the order of the learned lower authority and as has been also referred to in the order of the Tribunal in the case of Metraco (India) Ltd. v. Collector of Customs cited supra where the import had been made under similar circumstances, can be issued at different stages at the time of receipt of the goods as per Rule 3 of the Schedule of Rules relating to Bill of Lading (the Indian) Carriage of Goods by Sea Act, 1925 evidencing only the receipt of the goods by the Master or agent of the carrier and Rule 4 clearly states that such a Bill of Lading would be prima facie evidence of the receipt of the goods by the carrier. Under Rule 7 a shipped, Bill of Lading is issued on demand by the shipper after the goods are loaded on the vessel. It is this shipped Bill of Lading which evidences the commencement of the transit of the goods and which has been held by the Hon'ble Supreme Court as the relevant date to be considered for shipment of the goods. In fact when the goods are placed on board mate's receipt is issued which is the receipt by the Master of the vessel for receipt of the goods on board the ship and it is against this mate's receipt that a Bill of Lading is issued. In view of the discussion we hold that the Bill of Lading date, as pleaded by the appellants 1-11-1993, cannot be taken as the date of shipment of the goods but 7-12-1993 when the goods were actually placed on board when the shipped Bill of Lading was to be issued representing the commencement of the transit of the goods. The West Regional Bench of the Tribunal in the case of Metraco (India) Ltd. v. Collector of Customs, reported in 1989(11)LCX0023, has also taken a similar view under similar circumstances.

14.2.5 In my view, the contents of the portion reproduced hereinabove directly supports the case of the Department and not the Co-Noticee. On this ground, too, in my view, the said Co-Noticee's

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(M/s Mearsk's) Contention fails.

14.3.0 The said Co-Noticee's (M/s Mearsk's) last Contention is reproduced herein below ;-

- iv. Further, they had not received full of shipping instruction from the shipper until 28.04.2021 and there was also an ulterior issue such as technical & infrastructural difficulty in loading port for the shipping line.

14.3.1 In my view, the above contention harms the Co-Noticee instead of offering any assistance. When the goods had not been shipped the Bill of Lading cannot be taken as the document relevant for the eligibility of proper import of the goods involved in the instant case and instead only the date on which the goods were actually loaded in the vessel can be reckoned. For these reasons, I hold that the contention has no merit.

14.4 In view of the discussions made in paragraphs 15.0 to 15.3.1, I hold that a penalty under Section 117 of Customs Act, 1962 has to be imposed on M/s. Maersk Shipping Co. Ltd.

15. In view of the discussions and conclusions made in paragraphs bearing number (10) to (14.4) hereinabove, I pass the following order

ORDER

- i. *I order that the impugned goods imported by the importer M/s. Rina Brothers, under Bill of Entry No.4299516 dated 12.06.2021 valued at Rs.51,99,271/- (Rupees Fifty One lakh, Ninety Nine Thousand, Two Hundred and Seventy One only), which were affected by the conditions of Import restriction in the case of Watermelon Seeds as per DGFT Notification No.03/2015-2020 dated 26.04.2021 be and are hereby confiscated under the provisions of Section 111(d) of the Customs Act, 1962 read with the provisions of FT(D&R) Act, 1992, Foreign Trade Policy, 2015-20 and Hand Book Procedure,2015-20, as applicable to the present case. Since the goods had already been provisionally released, I impose a Redemption Fine of Rs . 5,00,000/- Rupees Five Lakh Only)on M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No.0808014391.*
- ii. *I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) under Section 112(a) (i) of the Customs Act, 1962 on M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No.0808014391.;*
- iii. *I hereby impose a penalty of Rs. 15,00,000/- (Rupees Fifteen Lakh only) under Section 114AA of the Customs Act, 1962 on M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170 holding IEC No.0808014391;*
- iv. *I hereby impose penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on the CHA-M/s. Meenu Rathore (AERPD3810JCH007), under Section 117 of the Customs*

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Act, 1962;

- v. *I hereby impose a penalty of Rs 3,00,000/- (Rupees Three Lakh only) on the Shipping Line M/s Mearsk Line India Pvt. Ltd., under Section 117 of the Customs Act, 1962.*
- vi. *I hereby impose a penalty of Rs 3,00,000/- (Rupees Three Lakh only) on the clearing agent, namely, M/s Vansh Logistics, under Section 117 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 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.

17. The SCN No. S/16-36/Enq-Rina Brothers/SIIB/CHM/2021-22 dated 30.11.2022 issued by the Additional Commissioner of Customs (SIIB), Custom House, Mundra, is hereby disposed of.

Signed by Mukesh Kumari

Date: 04-05-2023 15:57:59

MUKESH

**KUMARI, ADDL COM(MK)-CUS-MUNDRA, ADC/JC-I-O/o Pr
Commissioner-Customs-Mundra**

Noticees:

1. M/s. M/s. Rina Brothers, Sardar Chowk, Unjha, Mehsana, Gujarat-384170.
2. M/s Meenu Rathore Office No.1&2, 2nd Floor, Aastha Complex, Plot No. 17, Ward No.17B, Opp. Kidzee School, Gurukul, Gandhidham-370201.
3. M/s Mearsk Line India Pvt. Ltd., PD Plaza, 1st Floor, Plot No.3, 'Sec-9A, Tagore Road, Gandhidham-370201.
4. M/s Vansh Logistics, Office No. 110, Risabh Corner, Plot No.93, Sec-08, Near KDBA Gym Khana Tagore Road, Gandhidham-370201.

Copy to :

1. The Additional Commissioner of Customs (SIIB), Custom House, Mundra
2. The Deputy/Assistant Commissioner (RRA), Customs House, Mundra
3. The Deputy/Assistant Commissioner (TRC), Customs House, Mundra
4. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra
5. The Deputy/Assistant Commissioner (CB), Customs House, Mundra