

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271426/271423	
A. File No.	:	CUS/DOCK/182/2024-Docks Examn-O/o Pr Commr-Cus-Mundra
B. Order-in- Original No.	:	MCH/ADC/MK/168/2024-25
C. Passed by	:	Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	:	21.10.2024 /22-10-2024
E. Show Cause Notice No. & Date	:	SCN and PH Waiver
F. Noticee(s)/Party/Exporter	:	M/s Kedarnath Agro Industries, At & Po: Naj, Bareja Road, Ta-Daskroi, Dist: Ahmedabad, Gujarat-382425.
G. DIN	:	20241071MO0000888C54

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 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 ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

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

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

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s Kedarnath Agro Industries, At & Po: Naj, Bareja Road, Tadaskroi, Distt: Ahmedabad, Gujarat-382425, having IEC No. 0814016057, have filed Shipping Bill No. 3540664 dated 28.08.2024 through their CHAM/s Mahavir Shipping Service for export of goods declared as “Steam Basmati Rice” of Brand “RAWABI GOLD (130.025 MTS)” and “NOORA (52.010 MTS)” under CTH-10063020. The details of Shipping Bill are as under:

Table-I

Sr. No.	Shipping Bill No. & Date	Description	Net Wt.	Brand Name	FOB Declared in Shipping Bill (in Rs.)
1.	3540664	1121 Steam	130.025	RAWABI	Rs. 1,05,68,221.52/-

	dated 28.08.2024	Basmati Rice	MTS	GOLD	
2.	3540664 dated 28.08.2024	1509 Steam Basmati Rice	52.010 MTS	NOORA	Rs. 42,27,288.90/-
TOTAL					Rs. 1,47,95,510.42/-

2. The Shipping Bill was registered on 01.09.2024 and marked for check-packet by the ICES System. Following this, the CHA was instructed to de-stuff the goods for examination. Further, on 05.09.2024, a physical examination was conducted at MICT CFS, supervised by Shri Jitendra Dave (Superintendent DE), Shri Vikas Khatri (Preventive Officer DE), and Shri Jitendra Singh (Preventive Officer DE), in the presence of the Customs Broker's representative. During the examination, it was observed that the goods were packaged in 35 kg packets, bearing the brand names "RAWABI GOLD" and "NOORA". Preliminary findings indicated that some packets labelled as "RAWABI GOLD" contained "White Rice," differing from the declared goods "Steam Basmati Rice."

The details of the packets examined are as follows:

Table-II

S. No.	Container No.	Brand Name	Total No. of Packets	Appears to be Basmati Rice	Appears to be White Rice
1	DRYU2403749	Rawabi Gold	743	143	600
2	TNSU2001043	Rawabi Gold	743	143	600
3	TNSU2000200	Noora	741	741	0
4	DRYU2395448	Noora	743	743	0
5	CLHU3879298	Rawabi Gold	743	143	600
6	WHLU2737657	Rawabi Gold	743	142	601
		Rawabi			

7	GESU3276065	Gold	743	140	603
Total			5199	2195	3004

Following the examination, the Shipping Bill was forwarded to the Export Assessment section for advice. The Superintendent of Export Assessment requested the opinion of the Deputy Commissioner (Export) on this matter.

3. From Table-II at para 2 it appeared that the goods declared at Sr. No. 2 in above said Shipping Bill found as declared in terms of description and quantity. However, the goods declared at Sr. No. 1 in above said Shipping Bill found mis-declared in terms of description and quantity. Out of 3715 bags only 711 bags found of declared goods "Steam Basmati Rice of RAWABI GOLD Brand", rest of 3004 bags found mis-declared in terms of description i.e. "White Rice" as per examination report. The Details of Examination are as under:

Table-III

Sr. No.	Shipping Bill No. & Date	Description	Quantity in Bags	Net Wt.	FOB Value (in Rs.)	Remarks
1.	3540664 dated 28.08.2024	1121 Steam Basmati Rice (RAWABI GOLD)	711	24.885 MTS	Rs. 20,22,613/-	Goods found as declared in terms of description. However quantity of goods is mis-declared.
2.	3540664 dated 28.08.2024	1509 Steam Basmati Rice (NOORA)	1486	52.010 MTS	Rs. 42,27,289/-	Goods found as declared. In terms of description and quantity.
3.	3540664 dated 28.08.2024	1121 Steam Basmati Rice (RAWABI GOLD)	3004	105.14 MTS	Rs. 85,45,609/-	Goods found mis-declared in terms of description

4. The exporter vide letter dated 10.10.2024 submitted that due to Human error approx. 65000 kgs of “non-Basmati Rice” wrongly shipped with the export cargo and he is ready to pay minimum fine and penalty. He also requested for Back to Town of the said cargo and allow rest of cargo for Export. Further, vide letter 16.10.2024 submitted that he rechecked the goods and found that total 3004 bags of 35 kgs each of non-Basmati Rice stuffed in the goods declared in above said Shipping Bill due to Human error.

5. The goods declared as “Steam Basmati Rice of RAWABI GOLD Brand” in 3004 bags of 35 kgs each were found mis-declared in terms of description. The goods are “*non-Basmati Rice*” instead of declared goods i.e. “Steam Basmati Rice”, which are correctly classifiable under CTH 10063090 instead of declared CTH 10063020.

5.1. 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 re-produced 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.

5.2. 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:-

ITC HS Codes	Description	Export Policy	Revised Export Policy
1006 30 90	Non-basmati white rice (Semi-milled or wholly-milled rice, whether or not polished or glazed: Other)	Free	Prohibited

(Other)		
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6. The exporter has declared the goods to be exported vide the said Shipping Bill as "Steam Basmati Rice" of Brand "RAWABI GOLD (130.025 MTS)" and "NOORA (52.010 MTS)" and classified the same under CTH-10063020. However, on examination of goods, it is found and accepted by the exporter as well that the impugned goods which were packed in 3004 bags of 35 kgs each of "RAWABI GOLD" brand are actually "non-Basmati Rice" and not the one declared by the exporter, rest of the goods were found as declared in Shipping Bill. Also, as the goods were mis-declared, therefore, proper classification is required to be decided in this case.

7. 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.*

8. Whereas, it appears that, the exporter by resorting to mis-declaration of the description/CTH of the impugned goods as declared in Shipping Bill 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 which were packed in 3004 bags of 35 kgs each of "RAWABI GOLD" brand are actually "non-Basmati Rice" and not the one declared by the exporter, to be exported vide the said Shipping Bill. The goods has been mis-declared as "Steam Basmati Rice" (CTH-10063020) while the impugned goods are in fact "non-Basmati Rice" (CTH 10063090).

9. Whereas, from the above, it is evident that the export of non-Basmati 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(e), 113(h) & 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.

10. Whereas, it appears that, the exporter by resorting to mis-declaration of the description/CTH of the impugned goods as declared in Shipping Bill has failed to comply with the provisions of the Section 50 of the Customs Act, 1962. Further, the impugned goods of "RAWABI GOLD" brand found mis-declared in respect of the quantity and both the goods of "RAWABI GOLD" and "NOORA" brand used for concealment of the prohibited goods are liable for confiscation under Section 113(i) & 119 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(iii) of the Customs Act, 1962.

11. The relevant portion of the Section 113, 114 and 119 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;

(e) any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;

(f) ...

(g) ...

(h) any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

...

(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 119. Confiscation of goods used for concealing smuggled goods. —Any goods used for concealing smuggled goods shall also be liable to confiscation

11.1 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.*

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

(i) The description as well as classification of the impugned goods which were packed in 3004 bags of 35 kgs each of "RAWABI GOLD" brand are actually "non-Basmati Rice" and not the one declared by the exporter, attempted to be exported mentioned under Shipping Bill No. 3540664 dated 28.08.2024 as "Steam Basmati Rice" (CTH-10063020) are liable to be rejected and required to be re-classified as "non-Basmati Rice" under CTH 10063090;

- (ii) Impugned goods which were packed in 3004 bags of 35 kgs each of "RAWABI GOLD" brand are actually "non-Basmati Rice" and not the one declared by the exporter, covered under Shipping Bill No. 3540664 dated 28.08.2024, having FOB value Rs. 85,45,609/- are liable for confiscation under Section 113(d), 113(e), 113(h) & 113(i) of the Customs Act, 1962;
- (iii) Impugned goods of "RAWABI GOLD" brand found mis-declared in respect of the quantity and both the goods of "RAWABI GOLD" and "NOORA" brand used for concealment of the prohibited goods, having FOB value Rs. 62,49,902/- are liable for confiscation under Section 113(i) & 119 of the Customs Act, 1962;
- (iv) The exporter, M/s Kedarnath Agro Industries, having IEC No. 0814016057 for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) & 114(iii) of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING:

13. Exporter vide their letter dated 16.10.2024 submitted that due to human error, there was unintentional stuffing of the 3004 bags of 35 kgs each Non-Basmati Rice into the shipment under Shipping Bill No. 3540664 dated 28.08.2024. The exporter also requested for waiver of SCN/PH and he is ready to pay minimum fine and penalty as deemed fit by competent authority. He also requested for Back to Town of the cargo.

DISCUSSION AND FINDINGS:

14. 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.

14.1. The issues to be decided by me are:

- (i) The description as well as classification of the impugned goods which were packed in 3004 bags of 35 kgs each of "RAWABI GOLD" brand are actually "non-Basmati Rice" and not the one declared by the exporter, attempted to be exported mentioned under Shipping Bill No. 3540664 dated 28.08.2024 as "Steam Basmati Rice" (CTH-10063020) are liable to be rejected and

- required to be re-classified as “non-Basmati Rice” under CTH 10063090;
- (ii) Impugned goods which were packed in 3004 bags of 35 kgs each of “RAWABI GOLD” brand are actually “non-Basmati Rice” and not the one declared by the exporter, covered under Shipping Bill No. 3540664 dated 28.08.2024, having FOB value Rs. 85,45,609/- are liable for confiscation under Section 113(d), 113(e), 113(h) & 113(i) of the Customs Act, 1962;
- (iii) Impugned goods of “RAWABI GOLD” brand found mis-declared in respect of the quantity and both the goods of “RAWABI GOLD” and “NOORA” brand used for concealment of the prohibited goods, having FOB value Rs. 62,49,902/- are liable for confiscation under Section 113(i) & 119 of the Customs Act, 1962;
- (iv) The exporter, M/s Kedarnath Agro Industries, having IEC No. 0814016057 for rendering the impugned goods under confiscation is liable for penal action under Section 114(i) & 114(iii) of the Customs Act, 1962.

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

14.2. I find that the exporter declared the impugned goods to be exported under Shipping Bill No. 3540664 dated 28.08.2024 declared as “Steam Basmati Rice” under **CTH-10063020**, but as per examination report, the consignment of the exported goods is found to be “*non-Basmati Rice*” in 3004 bags of 35 kgs out of total 5201 bags each of “RAWABI GOLD” brand and same classifiable under **CTH-10063090**.

14.3. In view of above, as per the examination report, exporter reply and data produced before me, I find that the proper classification of goods “non-Basmati Rice” is 10063090 instead of declared CTH 10063020 for “Steam Basmati Rice”.

14.4. I find that the goods attempted to be exported are found as mis-declared and mis-classified and the exporter also accepted that the goods were packed in 3004 bags of 35 kgs each to be exported are non-Basmati Rice instead of declared goods i.e. Steam Basmati Rice, and therefore, I find that the goods are liable for confiscation under Section 113(d), 113(e), 113(h) & 113(i) of the Customs Act, 1962.

14.5. I find that the impugned goods of “RAWABI GOLD” brand found mis-declared in respect of the quantity and both the goods of “RAWABI GOLD” and “NOORA” brand used for concealment of the prohibited goods are

liable for confiscation under Section 113(i) & 119 of the Customs Act, 1962;

14.6. 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 ^{1/2}/not exceeding three times the value of the goods as declared by the exporter or the value as determined under this Act, whichever is the greater;

(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.

14.7. I find that the impugned goods packed in 3004 bags of 35 kgs each of "RAWABI GOLD" Brand to be exported under Shipping Bill No. 3540664 dated 28.08.2024 found to be "**non-Basmati 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(e), 113(h) & 113(i)** of the Customs Act, 1962. Further, I find that the impugned goods i.e. "**non-Basmati 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.

14.8. I find that the impugned goods of "RAWABI GOLD" brand found mis-declared in respect of the quantity and both the goods of "RAWABI GOLD" and "NOORA" brand used for concealment of the prohibited goods are

liable for confiscation under Section 113(i) & 119 of the Customs Act, 1962 and penalty is imposable in the case under **Section 114(iii)** of the Customs Act, 1962 for rendering the same liable for confiscation under Section 113 of the Customs Act, 1962.

15. 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 packed in 3004 bags of 35 kgs each of "RAWABI GOLD" Brand to be exported vide Shipping Bill No. 3540664 dated 28.08.2024 i.e. "Steam Basmati Rice" under CTH-10063020 and order to be re-classified as "non-Basmati Rice" under CTH-10063090.
- ii. I order to confiscate the Impugned goods packed in 3004 bags of 35 kgs each of "RAWABI GOLD" Brand covered under Shipping Bill No. 3540664 dated 28.08.2024 having FOB value Rs. 85,45,609/- under Section 113(d), 113(e), 113(h) & 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 12,00,000/- (Rupees Twelve Lakh Only) under Section 125 of the Customs Act, 1962.
- iii. I order to confiscate the impugned goods of "RAWABI GOLD" brand found mis-declared in respect of the quantity and both the goods of "RAWABI GOLD" and "NOORA" brand used for concealment of the prohibited goods, having FOB value Rs. 62,49,902/- under Section 113(i) & 119 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 7,00,000/- (Rupees seven Lakh Only) under Section 125 of the Customs Act, 1962.
- iv. I order to impose and recover Penalty of Rs 8,00,000/- (Rupees Eight Lakh Only) on the exporter under Sections 114(i) of the Customs Act, 1962.
- v. I order to impose and recover Penalty of Rs 5,00,000/- (Rupees Five Lakh Only) on the exporter under Sections 114(iii) of the Customs Act, 1962.

16. 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.

MUKE

SH KUMARI
ADDITIONAL COMMISSIONER
ADC/JC-I-O/o Pr Commissioner-Customs-Mundra

Date: 22-10-2024

BY SPEED POST

To,
M/s Kedarnath Agro Industries,
At & Po: Naj, Bareja Road,
Ta-Daskroi, Dist: Ahmedabad,
Gujarat-382425.

Copy to:- (1) The Deputy Commissioner, TRC/RRA/EDI, Custom House Mundra.
(2) Guard File.