	OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOM HOUSE KANDLA. NEW CUSTOMS HOUSE, NEAR BALAJI TEMPLE, KANDLA, KUTCH, GUJARAT. PHONE : 02836-271468-469 FAX : 02836 – 271467	
A. File No.	:	F.No.CUS/ASS/CORR/20/2024-EXPORT
B. Order-in- Original No.	:	KDL/ADC/DPB/09/2024-25
C. Passed by	:	Dev Prakash Bamanavat, Additional Commissioner of Customs Customs House, Kandla
D. Date of order /Date of issue	:	27.06.2024
E. Show Cause Notice No. &Date	:	Show Cause Notice and Personal Hearing waived by the noticee.
F. Noticee(s)/Party/ Exporter	:	M/s. Bhagwati Lacto Vegetarian Exports (P) Ltd, 18-1/2 , Anaj mandi, Ferozepur Cantt , Punjab- 152001. (IEC-3008002838)
G. DIN	:	20240671ML0000995EAC

1. यह अपील आदेश संबन्धित को नि:शुल्क 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 128A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकताहै-
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),कांडला
7 वीं मंजिल,मृदुल टावर,टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़,अहमदाबाद 380 009"
"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
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 thisorder.

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 mustaccompanied by –
(i) उक्त अपील की एक प्रति औरA 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 ड्यूटि/ 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 (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों कापालन 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 का7.5% 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:

1.1. M/s. Bhagwati Lacto Vegetarian Exports (P) Ltd, 18-1/2 , Anaj mandi, Ferozepur Cantt , Punjab- 152001 **(hereinafter referred to as the noticee/ exporter)** having IEC no. 3008002838 has filled Shipping Bills no. 1595353 dated 11.06.2024 through their CHA M/s. G S Infraport Pvt Ltd. for export of **1121 Basmati unprocessed SELLA Rice under CTH 10063020**. The detail of the Shipping Bill is as under:

S.No.	Shipping Bill No. & Date	Qty.	Declared Goods	No. Of Containers	Declared FOB
1.	1595353/ 11.06.2024	501 Mts	Basmati unprocessed rice	20*20	Rs.4,25,13,944/-

1.2. The goods were sealed under Factory Supervision by the exporter at their stuffing premises. However, on Examination Order reflected in the EDI system, the officers from Docks Examination, CH Kandla examined the goods covered under said Shipping Bill at KICT Terminal in the presence of authorized representative of the CHA on 18.06.2024.

1.3. On examining the goods, the officers were doubtful about the correctness of cargo declared as **1121 Basmati unprocessed SELLA Rice** and therefore drawn a sample for testing purpose and kept the further processing of shipping bill in abeyance until the result of Test Reports. The samples were drawn from randomly selected 04 containers with the approval of the Assistant Commissioner (DE), CH Kandla and were sent for testing to CRCL Kandla on 19.06.2024.

1.4. CRCL Kandla conducted test on the said samples and send its Test Report no. 2742-Export to the Docks Examination section on 21.06.2024. On going through the said CRCL Kandla Test Report, it is noticed that the test reports suggests *that:*

"Report:-
The sample as received in the form of pale yellow translucent rice grains of assorted sizes.
It has following constants:

1. *Broken Grains (% by mass) = 23.68*
2. *Damaged/Disc.Grains (% by mass) = 0.95*
3. *Chalky Grains (% by mass) = Nil*
4. *Foreign Matter (% by mass) = Nil*
5. *Weevilled Grains (% by mass) = Nil*
6. *Average Length (mm) = 7.88*
7. *Average Width (mm) = 1.78*
8. *Length/Width Ratio = 4.44*
9. *Elongation Ratio = 1.66*
10. *Average Length of cooked Rice (mm) = 14.75*
11. *Moisture Content (% by mass) = 11.06*

Based on the physical appearance, forms and analytical it may be considered as parboiled Rice (Basmati). However % of broken grains exceeds the limit as per the specification issued from the Ministry of Consumer Affairs, Foods & Public Distribution (File No. 8-4/2020 S&I, dated 28.09.2020)"

Whereas, in the said Shipping Bill no. 1595353 dated 11.06.2024, the exporter i.e M/s Bhagwati Lacto Vegetarian Exports (P) Ltd. has mis-declared the goods to be exported as "**1121 Basmati unprocessed SELLA Rice**".

S.No.	Shipping Bill No. & Date	Qty.	Declared Goods	Goods Found as per Test Report
1.	1595353/ 11.06.2024	501 Mts	1121 Basmati unprocessed rice	Parboiled Basmati Rice with 23.68% broken

1.5. Further, as per the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 as amended by Notification dated 11.01.2023, in case of broken and fragmented parboiled Basmati Rice (percent by mass) should not be more than 5.0%.

1.6. It is observed that the exporter has mis-declared the goods covered under the above said Shipping Bill No. 1595353 dated 11.06.2024 with malafide intention to export mis-declared Cargo which is in contravention to Section 50 of the Customs Act, 1962.

2. Relevant Legal Provisions:

2.1 Section 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting [1] [electronically] [2] [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 [3] [in such form and manner as maybe prescribed]:

*[4] [**Provided** that the [5] [Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [6] [on the customs automated system], allow an entry to be presented in any other manner.]*

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall [7] [* *] make and subscribe to a declaration as to the truth of its contents.*

[8] [(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.]

2.2. This act of omission and commission by the Exporter rendered the export cargo liable for confiscation under section 113(i) of the Customs Act, 1962. The Section 113(i) of the Customs Act, 1962 reads as:

> "**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.*
>
> ..."

2.3. Whereas , For rendering the goods liable for confiscation under Section 113(i) of the Customs Act, 1962, the exporter is also liable for penal action under Section 114(ii) of the Customs Act, 1962. The Section 114 of the Customs Act, 1962 reads:

> *"**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 7[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:

(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."

2.4. By this act of commission, the exporter appears to have failed to comply with the provisions of Section 50 of the Customs Act, 1962 rendering themselves liable for penalty under Section 117 of the Customs Act, 1962. The Section 117 of the Customs Act, 1962 is produced as under:

*"**117. Penalties for contravention, etc., not expressly mentioned**.—Any person who contravenes any provision 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 1[four lakh rupees]."*

2.5. Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 as amended by Notification dated 11.01.2023

"26. Basmati Rice. - (1) Basmati Rice shall be mature kernels of the varieties of Oryza sativa L. notified under the Seeds Act, 1966 (54 of 1966) as Basmati, which shall possess natural fragrance, characteristic of basmati rice both in raw and cooked forms and shall be free from artificial colouring, polishing agents and artificial fragrances.

(2) Basmati Rice shall be of the following types, namely: -

(a) Brown Basmati Rice (De- Husked) is paddy rice from which the husk only has been removed and the process of de-husking and handling may result in some loss of bran. The kernels shall be long, slender, light brown in colour having vitreous lustre (glossy in appearance);

(b) Milled Basmati Rice is de-husked rice from which all or part of the bran and germ has been removed by milling and the kernels shall be long, slender, white to creamy white or grayish colour and translucent;

(c) Parboiled brown (De- Husked) basmati rice (Brown basmati rice of parboiled paddy) may be processed from paddy that has been soaked in water so that the starch is fully gelatinized, followed by a drying process. The kernels shall be long, slender, brownish in colour;

(d) Milled Parboiled Basmati Rice may be processed from husked rice that has been soaked in water and subjected to heat treatment so that the starch is fully gelatinized, followed by a drying process, and the kernels shall be long, slender, creamy white, yellowish, brownish or grayish in colour and translucent;

(3) They shall conform to the following standards, namely: -

No.	Parameters	Brown Basmati Rice (De-Husked)	Milled Basmati Rice	Parboiled brown (De-Husked) basmati rice(Brown basmati rice of parboiled paddy)	Milled Parboiled Basmati Rice
1.	Average Length (mm)	7.0 and above	6.61 and above	7.0 and above	6.61 and above
-					
-					
15.	Broken and fragments (per cent. by mass), not more than	5.0	5.0	**5.0**	5.0

2.6. Ministry of Consumer Affairs, Foods & Public Distribution Specifications (issued vide File No. 8-4/2020 S&I, dated 28.09.2020)

'UNIFORM SPECIFICATION FOR GRADE 'A' & 'COMMON' RICE (KHARIF MARKETING SEASON 2020-2021)

Rice shall be in sound merchantable condition, sweet, dry, clean, wholesome, of good food value, uniform in colour and size of grains and free from moulds, weevils, obnoxious smell, admixture of unwholesome poisonous substances, Argemone mexicana and Lathyrus sativus (Khesari) in any form, or colouring agents and all impurities except to the extent in the schedule below. It shall also conform to prescribed norms under Food Safety & Standards Act, 2006/Rules prescribed hereunder.

SCHEDULE OF SPECIFICATION

S.NO.	Refractions		Maximum Limit (%)	
			Grade 'A' Common	Grade 'A' Common
1.	Brokens*	Raw	**25.0**	**25.0**
		Parboiled/single parboiled rice	**16.0**	**16.0**
-				
-				
-				

3. Records of Personal Hearing:

The said CRCL Kandla Test report was shared with the exporter with request to offer their submission in this regard. Besides, the exporter was also offered opportunity for personal hearing. In response a letter no. Nil dated 26.06.2024 was received from M/s Bhagwati Lacto Vegetarian Exports (P) Ltd. requesting this office to issue Back to Town permission for the goods covered under Shipping Bill no. 1595353 dated 11.06.2024. The exporter also requested to adjudicate the proceedings on the spot with waiver of Show Cause Notice and Personal Hearing. The exporter agreed to pay imposed Fine and penalty as applicable under Law and submitted that they will not file any appeal against the Order.

Discussion and Findings:

4. I have carefully considered facts of the case, allegation made above and the applicable provisions of the law under Customs Act/Rules, I find that following main issues are involved which are required to be decided as under:

(i) Whether the mis-declared goods attempted to be exported vide Shipping Bill No. 1595353 dated 11.06.2024, having declared FOB value of goods as Rs.4,25,13,944/- being in contravention of Section 50 of the Customs Act are liable for confiscation under Section 113(d), 113(h) and 113(i) of the Customs Act, 1962.

(ii) Whether Penalty on the exporter, viz., M/s. Bhagwati Lacto Vegetarian Exports (P) Ltd, 18-1/2 , Anaj mandi, Ferozepur, Cantt , Punjab- 152001 holding IEC no. 3008002838 who attempted to export mis-declared goods is imposable under Section 114(i), 114AA & 117 of the Customs Act, 1962.

5. Before deciding the issue, I would like to take up the facts-of the case before me for the adjudication and thereafter put up which indicate that:

- The exporter viz., M/s. Bhagwati Lacto Vegetarian Exports (P) Ltd. have filed shipping bill no. 1595353 dated 11.06.2024 for export of "1121 Basmati Unprocessed SELLA Rice" under CTH having declared FOB value of Rs.4,25,13,944/- through their CHA M/s. GS Infraport Pvt. Ltd.
- Pursuant to the Examination Order received in the EDI system, the goods were examined at KICT Terminal, as a result of which it created doubt about the declaration of the cargo and therefore random samples were drawn from the consignment.
- The said samples were sent to CRCL Kandla for testing purpose. CRCL Kandla vide its Test Report no. Dated 21.06.2024 has reported that the Rice is Parboiled Rice (Basmati), however *% of broken grains (which is 23.68% in present case) exceeds the limit as per the specification issued from the Ministry of Consumer Affairs, Foods & Public Distribution (File No. 8-4/2020 S&I, dated 28.09.2020)".*
- The exporter has contravened the provisions of Section 50 of Customs Act, 1962 and thus, the goods are liable for confiscation under Section 113(d), 113 (h) and 113(i) of the Customs Act, 1962.
- The exporter has made themselves liable for penalty under Section 114(i), 114AA & 117 of Customs Act, 1962.
- The exporter has requested to this office to adjudicate the proceedings without issuing any Show Cause Notice and personal hearing and allow Back to Town permission. The exporter also agreed to pay the applicable penalty and fine.

6. Before deciding the issue, I would like to take cognizance of the fact which is on record and placed before me to the effect that the exporter had accepted their offence and as a consequence of which it is a fit case for Back to Town permission in this matter.

7. I find that the said goods were declared in concealed mode, that is to say the fair, transparent and equitable declarations were found devoid of and amidst all, its mis-declaration and mis-classification by the exporter, viz. M/s. Bhagwati Lacto Vegetarian Exports (P) Ltd. and their CHA, viz., M/s. G S Infraport Pvt Ltd. Therefore, the Exporter/CHA/Customs Broker in brief all the stakeholders should have declared the said goods as Prohibited Goods. It is on record that the said Prohibited goods have entered the Indian Customs Area for the purpose of export in contravention to Prohibitions imposed by the Customs Act, 1962. Therefore, I find that the impugned goods have been brought in the Customs Area by way of improper declaration. They were needed to adhere to laid down operational requirements. Despite the fact that the subject goods are of prohibited one, they have improperly brought and the consignment arrived without proper declaration and identification before the Customs Authorities, thereby making them liable for confiscation under the Customs Act, 1962.

8. I refer to the Food Safety and Standards (Food Products Standards and Food Additives) Regulations 2011 as amended by Notification dated 11.01.2023 vide which standards of Rice has been prescribed, stated as under : -

No.	*Parameters*	*Brown Basmati Rice (De-Husked)*	*Milled Basmati Rice*	*Parboiled brown (De-Husked) basmati rice(Brown basmati rice of parboiled paddy)*	*Milled Parboiled Basmati Rice*
1.	Average Length (mm)	7.0 and above	6.61 and above	7.0 and above	6.61 and above
-					
-					
15.	Broken and fragments (per cent. by mass), not more than	5.0	5.0	**5.0**	5.0

9. From the detailed discussion as above, it is established that the impugned goods are liable for confiscation under Section 113 of the Customs Act, 1962 in as much as the goods were attempted to be exported in contravention to the Regulations imposed by FSSAI and Customs Act.

10. I have deduced that it is hard to believe that they were totally ignorant of the mis-declared items and feigning ignorance regarding its Prohibition for the purpose of export, they cannot put themselves entitled for any liberty, whatsoever it may be in this regard. Being a regular exporter, pleading ignorance of the law, rules and regulations cannot be taken shelter of.

11. Moreover, after going through the above matter minutely, I also infer that their conduct does not falls under the category of genuine mistake but paved towards establishment of mens rea. I also conclude with all the reasonable belief that it is quite apparent to the effect that there was a well-defined understanding/motive between the exporter and the Customs Broker towards the Impending clearance of export goods without any hassles. It is pretty much clear that they have all air tight intentions to clear the goods in question. Theirs expanded collusion and adventurism in the merchandise domain cannot be easily wished away. Both have attempted to thrive testing the boundaries of law.

12. It has been noticed that at no point of time, the said exporter has disclosed full, true and correct information about the nature of goods, or intimated to the Department. It has come to the notice only after Customs based investigations. From the evidences, it appears that the said exporter has knowingly suppressed the facts regarding nature of goods. Thus, it is understood that there is a deliberate withholding of essential and material information from the department about the nature of goods. It is seen that these material information have been deliberately, consciously and purposefully to evade scrutiny of impending export goods. I also find that the exporter was ready to pay the penalty and fine and do not want any show cause notice and personal hearing.

13. Accordingly, in view of the material on record and the acceptance tendered by the exporter, nothing much is left for discussion and thus, I find that the Exporter is guilty and deserve for suitable penal action as per Customs Act, 1962, as discussed in above paras. However, No substantial marked aversion has been found on their part. It is also on record that nowhere the exporter has raised the objection or contested the findings of the test reports. Furthermore, the burden of penalties has to be based on the principle of proportionality, a view endorsed and adopted by the Supreme Court in its Alembic vs. Rohit Prajapati judgement (1st April, 2020). So, after taking into consideration of all facts and circumstances and relying on the material on records, I am much inclined towards a just, fair, reasonable stance towards the Exporter and hence, take the lenient view in the proper perspective.

14. In view of my above findings, I pass the following order:

ORDER

(i) I hereby order to confiscate the consignment of 501 MTs covered under Shipping Bills No. 1595353 dated 11.06.2024 under the provisions of section 113(d), 113 (h) and 113(i) of the Customs Act, 1962. Since, the goods are physically available for confiscation, in lieu of confiscation, I give the exporter an option to redeem the goods on payment of **Rs.4,25,515/-** under Section 125 of the Customs Act, 1962. On exercising the option to pay Redemption Fine, the goods are allowed for **Back to Town (BTT)**.

(ii) I hereby impose the penalty of **Rs.4,25,515/-** under Section 114(i) of the of the Customs Act, 1962.

(iii) I hereby impose the penalty of **Rs.1,00,000/-** under Section 117 of the Customs Act, 1962.

15. 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.

(Dev Prakash Bamanavat),
Additional Commissioner (Export),
Customs House, Kandla.

F.No. CUS/ASS/CORR/20/2024-EXPORT

To,
M/s. Bhagwati Lacto Vegetarian Exports (P) Ltd,
18-1/2, Anaj Mandi, Ferozepur Cantt,
Punjab- 152001.

Copy To:-

(1) The Commissioner, Customs House, Kandla.
(2) The Deputy/Assistant Commissioner (TRC), Customs House, Kandla.
(3) The Deputy/Assistant Commissioner (RRA), Customs House, Kandla.
(4) The Deputy/Assistant Commissioner (EDI), Customs House, Kandla.
(5) Guard File.