

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA- 370421 Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62
A. File No.	: CUS/ASS/MISC/395/2023-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/103/2024-25
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 01-08-2024
E. Show Cause Notice No. & Date	: CUS/ASS/MISC/395/2023 dated 13.06.2023
F. Noticee(s)/Party/ Exporter	: M/s. Metco Export International, A/401, Koteshwar Palace, Kol Dongri Lane 4, Andheri East, Mumbai Suburban, Maharashtra 400069
G. DIN	: 20240871MO 000094129A

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 जापन के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।

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

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

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

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

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

Subject :- Mis-declaration of cargo in Shipping Bill Nos. 7921658 dated 20.02.2023 & 8197531 dated 02.03.2023 filed by M/s Metco Export International -Reg.

BRIEF FACTS OF THE CASE :

Whereas it appears that M/s Metco Export International, A/401, Koteshwar Palace, Kol Dongri Lane 4, Andheri East, Mumbai Suburban, Maharashtra 400069 having IEC No.0397008180, has filed Shipping Bill Nos. 7921658 dated 20.02.2023 and 8197531 dated 02.03.2023 through their CHA M/s Worldwind Shipping Services for export of goods declared as "Indian Non Sortex Parboiled Rice" classified under CTH-10063010.

2. As per Board Instruction No. 29/2022-Customs dated 28.10.2022, representative samples were drawn and sent to CRCL Kandla vide Test

Memos and the cargo has been allowed for export on provisional basis on submission of Test Bonds submitted by the Exporter which were accepted by the Deputy Commissioner (Export), Customs House, Mundra.

3. Respective Test Reports have been received against the Test Memos wherein it is mentioned that "Based on the physical appearance, forms and analytical findings, it appears to be "Other than Parboiled Rice (Broken 27.01%) and Parboiled Rice (Broken 26.30%)", against the declared export cargo in the Shipping Bills as "Indian Non Sortex Parboiled Rice". The details of Shipping Bills and their corresponding Test Reports 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.	7921658 Dated 20.02.2023	265 MTs	10732 Dt. 14.03.2023	69,52,819	Other than Parboiled Rice (Broken 27.01%)
2.	8197531 Dt. 02.03.2023	5 MTs	10391 Dt. 06.03.2023	1,31,003	Parboiled Rice (Broken 26.30%)

4. A copy of the said Test Reports have been provided to the Exporter, viz., M/s Metco Export International for their information with a specific request to submit their submission within 10 days of the communication as to why the proceedings should not be initiated under Customs Act, 1962 as the instant case were seen fallen under the purview of Mis-declaration of the Export cargo.

5. With reference to above mentioned Shipping Bills, the Exporter has classified the same goods as "Indian Non Sortex Parboiled Rice" classified under CTH 10063010 but pursuant to the outcome of the Test Result, the consignment of the exported goods is found to be "Other than Parboiled Rice (Broken 27.01%) and Parboiled Rice (Broken 26.30%)". As per Customs Tariff, Broken Rice is classifiable under CTH-10064000 and therefore the goods already exported is required to be classified under CTH-10064000 and to be confiscated being Prohibited Goods as per Notification No. 31/2015-2020-Customs dated 08.09.2022 issued by the Board. It is also pertinent to mention that goods are also found to be other than Parboiled Rice which concludes to be a mis-declaration as well. The relevant extracts of the said Notification is reproduced here-in-below :

ITC HS Codes	Description	Export Policy	Revised Export Policy
10064000	Only for broken rice	Free	Prohibited

6. Whereas, the Exporter under the Customs Bond has bind themselves to the effect that in the event of failure of cargo in the Test Report, the Exporter will pay the duty along with interest, fine and/or penalty, if any imposed for contravention of the Customs Act, 1962 and other allied Acts, and on the basis of Customs Bond submitted by the Exporter, the goods have been allowed for ultimate export provisionally.

7. Subsequently the Test Reports have confirmed that the exported goods were "Other than Parboiled Rice (Broken 27.01%) and Parboiled Rice (Broken 26.30%)". Accordingly, Shipping Bills mentioned in the Table above needs to be assessed finally on the basis of Test Reports. On the basis of Test Reports, the goods needs to be re-classified under CTH-10064000. Consequently, the Exporter is liable for penal action.

8. The Exporter appears to have failed to declare the correct classification of the export cargo in the Shipping Bills. It appears that the Exporter has resorted to mis-classification and mis-declaration of the export cargo in order to evade payment of export duty/cess leviable on the export cargo. Thus, the Exporter has contravened the provisions of the Section 50 of the Customs Act, 1962, which is re-produced here-in-below :

SECTION 50 : Entry of goods for exportation -

(1).....

(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.

9. Whereas, the acts of omission and commission made by the Exporter rendered the export cargo liable for confiscation under Section 113 (d) and 113(i) of the Customs Act, 1962 and the same is reproduced here-in-below :

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.

10 Whereas, on account of export goods liable for confiscation, the Exporter has made themselves liable for penal action under Section 114(i) & 114(ii) of the Customs Act, 1962 and the same is reproduced here-in-below :

SECTION 114 : Penalties 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 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 percent of the duty sought to be evaded or five thousand rupees, whichever is higher.

11. Whereas on account of contravention of the provisions of Section 50 of the Customs Act, 1962, the Exporter has made themselves liable for penal action under Section 117 of the Customs Act, 1962 and the same is reproduced here-in-below :

SECTION 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 four lakh rupees.

12. In view of the above, a Show Cause Notice was issued vide F. No. CUS/ASS/MISC/395/2023 dated 13.06.2023 whereby the exporter M/s Metco Export International, A/401, Koteswar Palace, Kol Dongri Lane 4, Andheri East, Mumbai Suburban, Maharashtra 400069 was called upon

to show cause in writing to the Additional Commissioner of Customs (Export), Customs House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:

- i. the classification of the goods declared by the Exporter under Shipping Bills tabulated above should not be rejected and under CTH 10064000;
- ii. the goods covered under Shipping Bill tabulated above should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962 ;
- iii. the penalty under Section 114 (i) and (ii) of the Customs Act, 1962 should not be imposed upon the Exporter;
- iv. the penalty under Section 117 of the Customs Act, 1962 should not be imposed upon the Exporter ;

RECORDS OF PERSONAL HEARING :

13. Personal Hearing was scheduled on 20.05.2024 at 04:00 PM and Shri Sanjay Khan Joya authorised representative of M/s Metco Export International appeared for Personal Hearing. During the personal hearing, Shri Sanjay Khan Joya submitted that the exporter is exporting more than 500 containers of Rice per annum and have not received any issues related to quality parameters so far because the goods were being exported upon confirmation that the quality parameters set forth by the overseas buyer were fully met with as per the survey report provided by his authorised world renowned surveyors deputed by the overseas buyer. He requested for retesting of the representative extra sample available.

DISCUSSION AND FINDINGS:

14. I have carefully gone through the records of the case. The exporter attended the Personal Hearing on 20.05.2024 and requested for retesting of the sample. As the SCN has been already issued the request of the exporter for re-testing of the sample can not be accepted at this point of time. 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 whether:

- i. The classification of the goods declared by the Exporter as "Indian Non Sortex Parboiled Rice" classified under CTH-10063010 covered under Shipping Bill Nos.7921658 dated 20.02.2023 & 8197531 dated 02.03.2023 should not be rejected and re-classified under CTH-10064000 as Broken Rice;
- ii. The goods covered under Shipping Bill Nos.7921658 dated 20.02.2023 & 8197531 dated 02.03.2023 should not be confiscated under Section 113 (d) and 113(i) of the Customs Act, 1962;
- iii. The penalty under Section 114 (i) and (ii) of the Customs Act, 1962

should not be imposed upon the Exporter;

iv. The penalty under Section 117 of the Customs Act, 1962 should not be imposed upon the Exporter;

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

14.2 I find that the exporter declared the impugned rice exported under Shipping Bill Nos. 7921658 dated 20.02.2023 & 8197531 dated 02.03.2023 as "Indian Non Sortex Parboiled Rice" classified under CTH-10063010 but pursuant to the outcome of the Test Result, the consignment of the exported goods is found to be "Broken Rice". As per Customs Tariff, Broken Rice is classifiable under CTH-10064000 and therefore the impugned goods are required to be re-classified under CTH-10064000.

14.3 I find that with effect from 09.09.2022, as per Notification No.31/2015-2020-Customs dated 08.09.2022 issued by Directorate General of Foreign Trade (DGFT), the export of "Broken Rice" classifiable under CTH-10064000 is prohibited. I find that the broken percentage of rice was above the permissible limit as per Trade Notice No.18/2022-23 Dated 04.10.2022. The goods were in violation of DGFT Notification No.31/2015-2020-Customs dated 08.09.2022 read with Trade Notice No.18/2022-23 Dated 04.10.2022. It is also pertinent to mention that the exporter has mis-classified the goods under CTH-10063010 instead of CTH-10064000 which make the goods liable for confiscation under Section 113(d) & 113(i) of Customs Act, 1962.

14.4 I find that Section 114 of the Customs Act, 1962 stipulates that:

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 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.

14.5 I find that the impugned rice exported under Shipping Bill Nos. 7921658 dated 20.02.2023 & 8197531 dated 02.03.2023 found to be "Broken Rice" are prohibited goods, therefore, the penalty in this case is imposable under Section 114(i) of the Customs Act, 1962 and not under Section 114(ii) of the Customs Act, 1962.

14.6 Further, I do not find any material evidence in the present case that suggests or goes on to proves that the exporter, in addition to the violation envisaged under Section 114(i) of the Customs Act, 1962, have committed any offence that invites penalty against them under Section 117 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 classification of the exported goods "Indian Non Sortex Parboiled Rice" classified under CTH-10063010 as declared by the exporter and ordered to re-classify the exported goods under CTH-10064000 as Broken Rice covered under Shipping Bill Nos. 7921658 dated 20.02.2023 & 8197531 dated 02.03.2023;
- (ii) I order for confiscation of the goods having FOB value of Rs.69,52,819/- and Rs.1,31,003/- covered under Shipping Bill Nos. 7921658 dated 20.02.2023 & 8197531 dated 02.03.2023 respectively under Section 113 (d) & 113(i) of the Customs Act, 1962. However, as the goods have already been exported under Bond, I impose Redemption Fine of Rs.7,00,000/- (Rupees Seven Lakh Only);
- (iii) I order to impose and recover penalty of Rs.3,50,000/- (Rupees Three Lakh fifty thousand Only) from the exporter under Section 114 (i) of the Customs Act, 1962;
- (iv) I refrain from imposing penalty under Section 114(ii) & 117 of the Customs Act, 1962 for the reason discussed as above;

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.

Signed by
(Mukesh Kumar Maru)
Additional Commissioner
Customs House, Mundra
Date: 01-08-2024 13:38:46

F.No.CUS/ASS/MISC/395/2023-EA

Dated:- 01-08-2024

BY SPEED POST

To,
M/s. Metco Export International,
A/401, Koteswar Palace,
Kol Dongri Lane 4, Andheri East,
Mumbai Suburban, Maharashtra 400069.

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

