



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.	:	F. No. VIII/48-34/Adj./Austin/Gr.IV/MCH/20-21
B. Order-in- Original No.	:	MCH/ADC/AK/10/2020-21
C. Passed by	:	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra.
D. Date of order /Date of issue	:	04.05.2020/ 04.05.2020
E. Show Cause Notice No. & Date	:	SCN waived in view of party's letter dated 29.04.2020.
F. Noticee(s)/Party/ Importer	:	M/s. Austin Foods & Beverages Pvt. Ltd., Nadiyad-Petlad Road, BandhanChokdi, Petlad, Vill. Vishnoli, Anand-388 130 (Gujarat)
G. DIN	:	20200571MO00006M6733

1. यह अपील आदेश संबंधित 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 128A 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), कांडला

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, 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 this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/-

रुपए का टिकट लगा होना चाहिए और इसके साथ निम्न लिखित 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 आदिके भुगतान का प्रमाण संलग्न किया जाना चाहिये।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

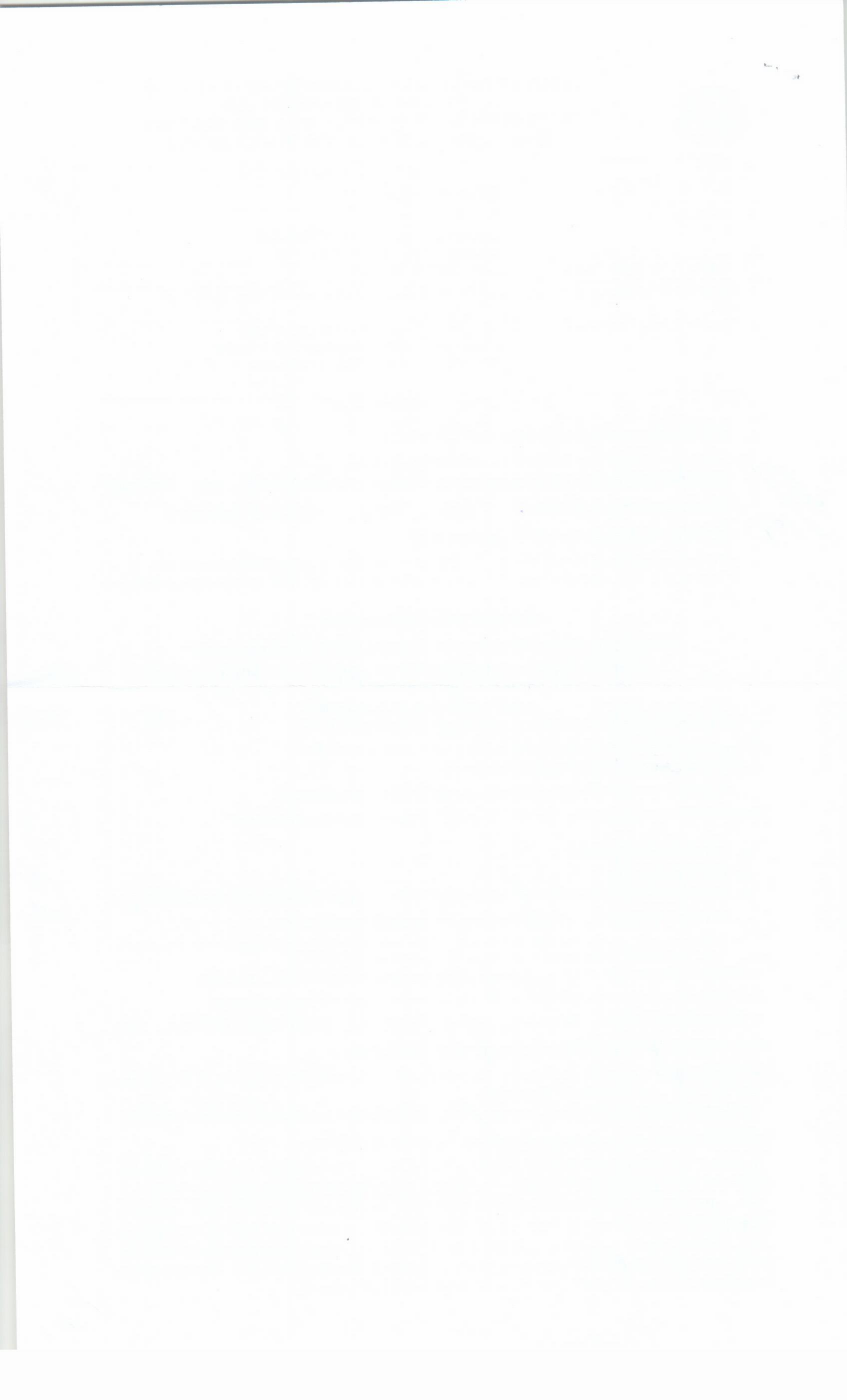
6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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.

Sub.:- Bill of Entry No.7463911 Dated.17.04.2020 through CB M/s. Rajasthan Container Services for clearance of 1252000 Pcs of “OTS Canes/Tins seamed with normal end” against DEEC Licence scheme vide Bill of Lading No. EGLV146127447 dated 18.03.2020 and Invoice no. BX202042 dated 16.03.2020 filed by M/s. Austin Foods & Beverages Pvt. Ltd., Nadiyad-Petlad Road, BandhanChokdi, Petlad, Vill. Vishnoli, Anand-388 130 (Gujarat)



BRIEF FACTS OF THE CASE

M/s. Austin Foods & Beverages Pvt. Ltd., Nadiyad-Petlad Road, Bandhan Chokdi, Petlad, Vill. Vishnoli, Anand (IEC NO-5213012108) filed Bill of Entry No.7463911 Dated.17.04.2020 through CB M/s. Rajasthan Container Services for clearance of 1252000 Pcs of "OTS Cans/Tins seamed with normal end" against DEEC Licence scheme vide Bill of Lading No. EGLV146127447 dated 18.03.2020 and Invoice no. BX202042 dated 16.03.2020. The Invoice value of the goods is declared as US\$.076/Set. The goods were examined on 1st check basis with 10% examination order. During examination an excess weight 3527 kgs was found, hence, to ascertain actual quantity 100% examination was ordered. As per 100% examination report, the weight and pcs of the goods are as under:

SR.N O.	Description of goods	Weight in KGS as documents	No. of PCS as Documents	Ass. Value	Duty Forgone	Excess Qty.		Value involved (Rs)	Duty involved (Rs.)
						Weight	PCS		
1	OTS Cans (Set)	64000 KGS	12,52,000 PCS	Rs.73,88,552.8	Rs.22,88,973.7	3803.75 KGS	2,36,275 PCS	1394353.00	4,31,970.00

Accordingly, the total pieces of the cargo is found 14,88,275 pieces instead of declared pcs 1252000 pieces on the basis all relevant of import documents which are excesses by **236275 pieces equivalent 18.87%** of the declared pieces of the imported goods.

The importer appears to have mis-declared the quantity of 236275 in pieces of goods valued at Rs.13,94,353/- involving duty amounting to Rs.4,31,970/-.

Thus the importer has contravened the provision of section 46 (4) of the Customs Act, 1962 and the condition mentioned in Advance Authorization thereby, made the goods liable for confiscation under the provisions of section 111(m) and 111(o) of the Custom Act, 1962. The said importer also rendered themselves liable to penal action under the provisions of Section-112(a) of the Customs Act, 1962.

The importer vide its letter dated 29.04.2020 has waived the issuance of show cause notice and does not want to appear for personal hearing.

SUBMISSION OF IMPORTER AND PERSONAL HEARING

The importer vide his letter dated 29.04.2020 stated that they are manufacturing unit based at Anand vide GST No. 24AALCA5411D1Z6. Their supplier Fujian Example EOE GroupCo. Ltd has shipped cargo. They are exporting the food item under DEEC scheme. Their supplier shipped excess quantity 236275 pcs of OTS can for which they feel sorry. The supplier will again reissue the invoice. They further waived the issuance of show cause notice and personal hearing.

DISCUSSION AND FINDING

I have carefully gone through the records of the case, reply of the importers, examination report of the department and I find that the importers have waived the issuance of show cause notice and does not want to appear for personal hearing vide his letter dated 29.04.2020, hence I find that the compliance of section 122 A has been done.

I find that the importers have imported the goods under Advance Authorization, which is quantity and value based Licence No. 2410042611 dated 31.12.2018. They imported 1252000 PCS of OTS cans with declared value Rs. 73,88,552.00, however, when the goods were examined 100%, the quantity is found as 1488275 pcs, i. e an excess quantity 236275 pcs valued of Rs. 13,94,353.00 involving Customs duty to the tune of Rs. 4,31,970.00. Hence they have violated the provisions of section 46(4) of the Customs Act, 1962 and the conditions laid down in the Advance Authorization. Therefore the excess goods are liable for confiscation under Section 111(m) and 111(o) of the

Customs Act, 1962. The importers are also liable for penal action under Section 112 of the Customs Act, 1962.

I also find that the excess quantity of 236275 pcs are not covered under Advance Authorization, hence they said quantity can not be debited in the Advance Authorization and the importers are to amend the bill of entry for this quantity and the duty has to be recovered from them on the said quantity under relevant CTH.

In light of the above, I pass the following order;

ORDER

- a. I order to amend the Bill of entry No. 7463911 dated 17.04.2020 for the excess quantity and recover the Customs duty on the said quantity under the relevant CTH.
- b. I order the confiscation of 236275 pcs of OTS cans valued at Rs.13,94,353 covered under Bill of Entry No. 7463911 dated 17.04.2020 under Section 111(m) and 111(o) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of fine of Rs. 2,00,000.00 (Rupees Two Lakh only) under Section 125 of the Customs Act, 1962.
- c. I also impose penalty of Rs. 50,000.00 (Rupees Fifty Thousand only) on M/s Austin Foods & Beverages Pvt. Ltd., Nadiyad-Petlad Road, Bandhan Chokdi, Petlad, Vill. Vishnoli, Anand under Section 112 of the Customs Act, 1962.


(AJAY KUMAR)

Additional Commissioner,
Custom House Mundra

Dated: - 04.05.2020

F. No.: VIII/48-34/Adj./Austin/Gr.IV/MCH/20-21

By REGD. POST A.D/Hand Delivery

To,

M/s. Austin Foods & Beverages Pvt. Ltd.,
Nadiyad-Petlad Road,
Bandhan Chokdi, Petlad, Vill. Vishnoli,
Anand-388130

Copy to:

1. The Commissioner of Customs, Custom House, Mundra.
2. The Deputy Commissioner of Customs (RRA/TRC), Custom House, Mundra.
- ✓ 3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. The Deputy Commissioner of Customs (Gr-IV), Custom House, Mundra.
5. Guard File.

