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		<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT &amp; SPL ECONOMIC ZONE, MUNDRA-370421 Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62</p>
A	File No.	F.NO. VIII/48- 1534/SIIB Enquiry/Sana/GR-I/MCH/19-20
B	Order-in-Original No.	MCH/ADC/AK/ 90/2019-20
C	Passed by	Shri Ajay Kumar Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of Order	07.01.2020
E	Date of Issue	07.01.2020
F	SCN NO. & Date	NIL
G	Noticee/Party/Importer / Exporter	M/s. Sana Enterprise, Survey No. 295, Plot No.-24, Dhindh, Mandavi, Guarat-370465

- यह अपील आदेश संबन्धित 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), 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 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,  
Ashram Road, 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 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.
- 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: Import of 'Wet Dates' vide Bill of Entry No. 5478557 dated 29.10.2019 by M/s. Sana Enterprise, Survey No. 295, Plot No.-24, Dhindh, Mandavi, Guarat-370465 for violation of Customs Act and Rules thereon.**

## BRIEF FACTS OF THE CASE

M/s. Sana Enterprise, Survey No. 295, Plot No.-24, Dhindh, Mandavi, Guarat-370465 (IEC No.: 3717500911) filed Bill of Entry No. 5478557 dated 29.10.2019 through their Custom Broker M/s. Damji Dhirao & Sons for clearance of 15 MTs of goods declared as "Wet Dates" under CTH 08041020 having assessable value of Rs. 7,62,230/- imported vide BL No.- BAXSS078197 dated 17.10.2019. The goods are covered under Commercial Invoice No. 3473 dated 13.10.2019 issued by Dubai Dates Factory LLC, PO Box No. 31246, Sharjah UAE.

1.1 During examination of cargo, it appears that importer mis-declared the said goods as there were dry dates along with the wet dates. Therefore the matter was referred to SIIB, and the goods were examined by the officers of SIIB, Customs House, Mundra in presence of Panchas and representative of Custom Broker's under Panchnama dated 14.11.2019. During the course of examination, following discrepancies were noticed. Details of which are as under:-

Subject	Wet Dates	Dry Dates
No Of Boxes	618	880
Net Weight	6.52 MT	9.29 MT
Batch Nos.	UH19D21A	UDY19E01A

1.2 Statement of the importer Shri Sikandar Siddik Bholim was recorded on 21.11.2019 under section 108 of the Customs Act, 1962, wherein he accepted the discrepancies of the consignment and accepted that the goods are mis-declared. Further, he agreed to pay all the dues of the government i.e. additional duty, fine and penalty by the government/valuer. Statement of one of the authorized signatory of CHA M/s. Damji Dhirao & Sons was also recorded on 21.11.2019 under Section 108 of the Customs Act, 1962, who also accepted that the goods have been mis-declared. Importer vide letter dated 06.12.2019 has voluntarily agreed that the cargo might be of Pakistan Origin and accepted to pay fine, penalty and redemption fine. Further, the classification of the goods of Pakistan origin is 98060000, hence the said goods are to be classified under CTH 98060000.

1.3 From the above, it appeared that by way of misdeclaration and misclassification of the impugned goods, the importer has rendered the said goods i.e. 15 MTs of Wet dates having declared value of Rs. 7,62,230/- liable for confiscation under Section 111 (i) and (m) of the Customs Act, also the wet dates which has been used to conceal the dry dates is liable for confiscation under section 119 of the Customs Act, 1962. Further, this Act makes the importer liable for penal action under Section 112(a) of the Customs Act, 1962.

2. The importer vide their letter dated 20.12.2019 has agreed to pay additional duty, fine and penalty and requested to waive show cause notice and personal hearing in the matter.

### DISCUSSION AND FINDINGS

3. I have carefully gone through the records of the case and I find that the importer vide their letter dated 20.12.2019 has waived the issuance of show cause notice. Further they have also waived opportunity of personal hearing. Thus, I find that principles of natural justice as provided in Section 122 A of the Customs Act, 1962, has been complied with and therefore, I proceed to decide the case on the basis of evidences available on record. The points to be decided in the instant case are:-

- I. Whether the impugned goods are classifiable under tariff heading 98060000 or otherwise &
- II. Whether the impugned goods are liable for confiscation under Section 111(i) and (m) of the Customs Act, 1962 and the importer is liable to penalty under Section 112(a) ibid.

3.1 I find that description of the impugned goods has been declared in the Bill of Entry as 'Wet Dates and the same have been classified under tariff heading 08041020 with duty payable @ 20%. However, I find that the goods are dry dates mixed with the wet dates. The details of which are as under:-

Subject	Wet Dates	Dry Dates
No Of Boxes	618	880
Net Weight	6.52 MT	9.29 MT
Batch Nos.	UH19D21A	UDY19E01A

Further, it is noticed that the importer is not able to produce the documentary proof for the origin of the Dry Dates and vide letter dated 06.12.2019 he agreed that cargo might be of Pakistan Origin. Hence, I find that the goods are to be treated as "Dates of Pakistan Origin" and therefore are to be classified under CTH 98060000 with applicable rate of duty.

3.2. I further find that Shri Sikandar Siddik Bholim in his statement dated 21.11.2019 has agreed that cargo is mis-declared and agreed to pay all the dues of the government i.e. additional duty, fine and penalty and vide letter dated 20.12.2019 has admitted that cargo has originated/exported from Pakistan.

3.3 In this regard, I put reliance on Notification No. 05/2019-Customs Dated: 16th February, 2019 vide which all goods originating in or exported from the Islamic Republic of Pakistan are liable to pay BCD @200%. Details of which is reproduced below:-

**MINISTRY OF FINANCE**

**(Department of Revenue)**

**Notification No. 05/2019-Customs**

New Delhi, the 16th February, 2019

**G.S.R. 124(E).**—WHEREAS, the Central Government is satisfied that the import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), should be increased and that circumstances exist which render it necessary to take immediate action.

NOW, therefore, in exercise of the powers conferred by sub-section (1) of section 8A of the Customs Tariff Act, the Central Government, hereby directs that the First Schedule to the Customs Tariff Act, shall be amended in the following manner, namely:

In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item **9805 90 00** and the entries relating thereto, the following tariff item and entries shall be inserted, namely:—

(1)	(2)	(3)	(4)	(5)
"98060000	All goods originating in or exported from the Islamic Republic of Pakistan	—	200 %	—".

3.4 Further, I find that invoice value of goods is Rs. 44,220/- per MT which may be considered as transaction value for Wet dates as well as Dry dates. Accordingly, value of imported goods comes to **Rs. 6,63,300/-** and differential duty required to pay is **Rs. 14,34,686/-**.


3.5 I also find that in terms of Section 46 of the Customs Act, 1962, the importers of any goods are required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry in terms of section 46(4) of the Customs Act, 1962, whereas in the instant case, the importer had filed Bill of Entry with incorrect particulars and classification as discussed hereinabove. Therefore, the goods imported by the importer as such, is liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that wet dates of 6.52 Mts has been used to conceal the dry dates and thus the goods are also liable for confiscation under Section 111(i) of the Customs Act, 1962. I further find that 880 Boxes of Dry Dates are concealed with 618 boxes of Wet Dates, therefore the Dry Dates are also confiscated under Section 119 of the Customs Act, 1962. For the omission and commission

of the act by the importers, they also rendered themselves liable for penal action under Section 112(a) ibid

4. In view of the above discussions and findings, I pass the following order:

### ORDER

- a. I reject the declared classification of imported goods 'Wet Dates' under CTH 08041020 and order the same to be re-classified under CTH-98060000 in respect of B/E No. 5478557 dated 29.10.2019 with applicable rate of duty.
  - b. I order for confiscation of imported valued at Rs. 6,63,300/- covered under B/E No. 5478557 dated 29.10.2019 under Section 111(i) and 111 (m) of the Custom 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 a penalty of Rs.1,00,000.00 (Rupees One Lakh only) on the importer M/s Sana Enterprises under Section 112(a) of Customs Act, 1962.
- 5.. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

  
(AJAY KUMAR)  
Additional Commissioner,  
Custom House Mundra  
Dated: 07.01.2020

**DIN-20200171MO00004MC4C5**  
**By REGD. POST A.D/Hand Delivery**

To,

M/s. Sana Enterprise,  
Survey No. 295, Plot No.-24,  
Dhindh, Mandavi, Guarat-370465

**Copy to:**

1. The Pr. 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. CHA- M/s. Damji Dhiraoo & Sons.
5. Guard File.