	प्रधानआयुक्तकार्यालय, सीमाशुल्कसदन, मुंद्रा OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOM HOUSE, MUNDRA 5B, Port User Building, Mundra, (Gujarat) EPBX No. 02838-271165, 66, 67, 68, Fax: 02838- 271161, 271169, 271171	
	F. No: S/Disp-208 to 211/APSEZ/AUCTION/MICT.CFS/2017-18	Date :-26.06.2020

A	File No.	F. No: S/Disp-208 to 211/APSEZ/AUCTION /MICT CFS/2017-18
B	Order-in-Original No.	MCH/ADC/SK/23/2020-21
C	Passed by	Shri Sushant Kumar, Additional Commissioner of Customs (Disposal), Customs House, Mundra
D	Date of order	26.06.2020
E	Date of issue	26.06.2020
F	SCN No. & Date	F. No: S/Disp-208 to 211/APSEZ/AUCTION /MICT CFS/2017-18 Dtd.30.01.2019
G	Noticee/Party/Importer/Exporter	M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar 143001
H	DIN No.	<u>DIN-20200671MO00002R8CBE</u>

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 128 (1) of the Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to: **"THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA"** having his office at 7th Floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad-380009.
3. Appeal shall be filed within sixty days from the date of communication of this order.
4. The appeal should bear Court Fee Stamp of Rs.2/- under Court Fee Act and it must be accompanied by –
 - (i) A copy of the appeal, and
 - (ii) This copy of the order or any other copy of this order, which must bear a Court Fee stamp of Rs.2.00 (Rupees two only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

Sub:- Show Cause Notice F. No.: S/Disp-208 to 211/APSEZ/AUCTION/MICT CFS/2017-18 Dtd.30.01.2019, issued to M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar - 143 001.

Brief facts of the case:-

M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar 143001, (herein after referred as "the Noticee") has imported 113.275 MTs goods namely "**Basmati Rice (Zafrani Brand)**" falling under CTH 10063020 vide (1) Bill of Lading No. EX24247 dated 09.05.2017, (2) EX24126 dated 25.05.2017, (3) EX24478 dated 01.06.2017 and (4) EX24385 dated 25.05.2017 through the vessel Northern Monument V.1705. The said cargo is imported in the Container Nos. GATU4318766 and CLHU4592189, MRKU0907058 and MSKU6037609, GVCU5077152 and MRKU6064346 respectively which were arrived at CFS on 08.07.2017, 16.07.2017, 23.07.2017 and 16.07.2017 respectively.

S.No.	Shipping Bill No. & Date	B/L No. & Date	Description of Goods	Weight as per BL
1	1618619/14.10.2016	EX24247/09.05.2017 MBL 769634377	Jafrani Brand Basmati Rice	41.347 MT
2	1449978/14.10.2016	EX24126/25.05.2017 MBL 769595064		41.109 MT
3	1240653/24.09.2016	EX24478/01.06.2017 MBL 572860660		10.242 MT
4	1240653/24.09.2016	EX24385/25.05.2017 MBL 769728984		20.577 MT
TOTAL				113.275 MT

2. The cargo remained unclaimed for a period more than 30 days, consequently the custodian viz. M/s Mundra International Container Terminal Pvt. Ltd. CFS (MICT CFS), Mundra has issued notices under Section 48 of the Customs Act, 1962 on 11.09.2017 and 27.09.2017 to the importer/consignee for clearance of the goods. However, the noticee has neither approached for clearance of the cargo nor have complied the notices sent to them.

3. The examination of the cargo was conducted by the officers of Dock Examination, Custom house, Mundra on 13.04.2018 wherein the veracity of the goods was confirmed as "Rice" weight 41795Kgs, 41930Kgs., 20760Kgs., 20940Kgs. respectively. The goods were found in jumbo bags and there were no marks and numbers found on the same. It was also observed that the said cargo is of re-import, which was earlier exported vide Shipping Bill No. 1618619 and 1449978 both dated 14.10.2017 and 1240653 dated 24.09.2015. As per the FSSAI Certification vide CHM NO.1176/2018-19 dated 09.05.2018, the sample confirms to the standards and provisions laid down under regulation of Food Safety and standards (Food Product and Additive) Regulation 2011 and provision of the Food Safety and Standard Act, 2006 and Rules made there under.

4. During the scrutiny of the documents and provisions of the Customs Act, 1962 and Customs Tariff Act, 1975, it is noticed that the consignment i.e. "**Basmati Rice**" are allowed to be imported through Food Corporation of India subject to Para 2.20 of the Foreign Trade Policy.

Provision of Para 2.20 of the Foreign Trade Policy 2015-2020 are as under:

- (a) State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.
- (b) Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.
- (c) DGFT may, however, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.

5. The Notice has imported **Basmati Rice (Zafrani Brand)** vide above mentioned Bill of Lading and the goods were not cleared for home consumption or were not warehoused or transhipped within thirty days from the date of unloading thereof at a custom station or within such further time as the proper officer may allow. Thus, it appears that they have imported the cargo of for which they are not entitled to import and for which they have neither submitted any authorization as prescribed under the Foreign Trade Policy 2015-20 nor cleared the same. It also appears that the goods is re-imported and exporter of the goods has taken the benefit of Drawback on AIR against the exported goods. Thus, it appears that the consignment i.e. **"Basmati Rice (Zafrani Brand)"** was imported, in violation of the provisions of Foreign Trade policy 2015-20 and is liable to confiscation.

6. Further, the provisions of Section 23(2) of Customs Act, 1962 can be read as under:

"The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon".

"Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force".

7. On the basis of above, it appears that the notices has contravened the provisions of;

a). Para 2.20 of the Foreign Trade Policy-2015-2020 by importing the item of for which they are not entitled to import and for which they have neither submitted the authorization as prescribed under the Foreign Trade Policy nor cleared the same and rendered their cargo i.e. **"Basmati Rice (Zafrani Brand)"** liable for confiscation as per Section 111(d) of the Customs Act, 1962, as amended.

b). Section 23(2) of Customs Act, 1962 by importing the goods of restricted category for which they have not submitted the required DGFT authorization, hence they cannot relinquish their title to the said imported goods and rendered themselves liable for penal action as per Section 112(a) of the Customs Act, 1962, as amended.

8. Now, therefore on the above facts, the notice is hereby called upon to show cause to the Deputy Commissioner of Customs (Disposal) Custom House, having office at Room No. 110 First Floor, PUB building, MP&SEZ, Mundra as to why:-

- i) The consignment i.e. **"Basmati Rice (Zafrani Brand)"** valued Rs.18,80,000/- (Rupees Eighteen Lakhs and Eighty Thousand only) should not be confiscated under the section 111(d) of the Customs Act, 1962, as amended.
- ii) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 as amended.

9. **Defense reply:-**

M/s. Punjab Basmati Rice Ltd., Amritsar, have authorized and appointed Shri Vikas Mehta, Consultant (former Superintendent, Customs, Central Excise & Service Tax) with M/s. D'legal (Advocates & Consultants), 1st Floor, Plot No. 159, Sector 1A, Near Vikram Glass House, Gandhidham {K), as my/our Authorized Representatives to act, appear, make written as well as oral submissions and plead in the above noted case. M/s. Punjab Basmati Rice Ltd., Amritsar submitted their written submission dtd.31.05.2019, received by this office on 06.06.2019 wherein they have submitted the following;

"We have been appointed by M /s. Punjab Basmati Rice Ltd., Amritsar, Punjab ("noticee") to represent them before your Honour in the matter covered by Show cause notice No. VIII /48-95/BRC/CHM/18-19 dated 02.11.2018 ("notice").

2. The notice calls upon the noticee to show cause to your Honour as to why:

(i) The consignment i.e. "Bamati Rice (Zafrani Brand)" valued Rs.18,80,000/-...should not be confiscated under the section 111 (d) of the Customs Act, 1962, as amended.

(ii) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962 as amended."

2.1 As per the notice, a total of 113.275 MT of rice ("goods") covered by 04 bills of lading have landed at Mundra port during May, 2017. Details of bills of lading are given in the notice.

2.2 The notice presumes that these are the same goods that were exported by the noticee earlier (as per details given in the notice) and have been reimported by us. The notice makes a further averment that import of these goods would require an authorization from DGFT and in the absence of such an authorization, goods have become liable to confiscation under section 111 (d) of Customs Act, 1962 and the noticee have rendered themselves liable to penalty under section 112(a) of Customs Act, 1962.

3. At the outset, the allegations and averments leveled against the CFS are hereby denied. Save and except what is specifically admitted herein, no part of notice which is not expressly dealt with, shall be deemed to be admitted.

4. The submissions advanced hereunder are independent of and without prejudice to each other.

4.1 The noticee has not imported any goods and have not filed any bill of entry for clearance of the same.

4.2 In the case of R. S. Impex v/s Commissioner of Customs, New Delhi, 2018 (359) E.L.T. 593 (Tri.-Del.), Hon'ble Tribunal has held that:

4. We have heard both the sides and perused the appeal records. The first point to determine is whether or not the appellant is considered to be an "importer" of the impugning goods. Section 2(26) of the Customs Act, 1962, defines "importer" as below:

"Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer.

5. We note that the original authority emphasized on the fact that the Bill of Lading dated 12-1-2012 was bearing the name of the appellant. Based on such Bill of lading, the CHA of the appellant approached the shipping line for delivery order and paid the shipping charges. The Bill of Lading was handed over to CHA by an employee of the appellant. On these facts, the original authority held that the appellant is the real importer of the goods. We note that the term "importer" is clearly defined in the Act. It includes any owner or any person holding himself out to be importer. These are to be established by factual enquiry. When the appellant denies that he did not import goods and did not hold himself to be the importer of such goods, then it is for the Revenue to categorically establish that the appellant was indeed the owner of the goods. Except for the Bill of Lading which itself is being disputed as a mistaken transaction by the shipper, there is no other evidence on record to hold the appellant as the importer or person behind the importation of such goods. Admittedly, there is no evidence that the appellant received invoice, packing list or remitted any money towards impugning goods. In fact, there are correspondences to show that the appellants protested with the supplier on the receipt of consignment in his name. Without commenting on the genuineness of these correspondences, it can still be concluded that the appellants do not fall within the statutory scope of "importer" under Section 2(26).

6. The next important point is question of misdeclaration and penal consequences thereof with

reference to impugning goods. To have a case of misdeclaration of imported items, it is necessary to have a statutory document which can form basis of such declaration/misdeclaration of the nature and content of all imported items. Section 46 deals with entry of goods on importation. The importer of any goods shall make entry thereof by presenting to the proper officer, a bill of entry for home consumption in the prescribed form. A bill of entry shall include all the goods mentioned in the Bill of Lading given by the carrier to the consignor. Section 46(4) stipulates that the importer while presenting the bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of his declaration produce to the proper officer the invoice, if any, relating to the imported goods.

7. Admittedly in the present case, there has been no bill of entry filed by any person. The appellants claim that they have not filed any bill of entry. We note that the original authority concluded that description of goods in the Bill of Lading would have led to misdeclaration in the bill of entry. We note that such presumptive reasoning by the original authority is not supported by the legal provisions. It is clear that the question of misdeclaration will arise based on the statutory document filed by the importer before the Customs authorities. Such document in respect of import, is bill of entry under Section 46. The Bill of Lading is not a document of declaration of contents of imported items statutorily filed by the importer with the customs authorities for clearance of goods. In other words, the Bill of Lading is not an assessing document for customs authorities. It cannot substitute a bill of entry. We find, in this regard, the original authority had fallen in error in appreciating the legal provisions discussed above.

8. The Hon'ble Supreme Court in Northern Plastic Limited, AIR 1998 SC 2371 held that the word "entry" in case of imported goods means an entry made by the bill of entry. Misdeclaration of goods under Section 111(m) would arise if the imported goods do not correspond in respect of value or in any number with that stated in the bill of entry. In Royal Impex, 2007 (211) E.L.T. 71 (Tri.-Chennai). The Tribunal held that the first option for an importer to declare or misdeclare particulars of the goods imported by him is at the stage of filing bill of entry. He cannot be held liable for any misstatement of particulars in Bill of Lading or import manifest. The Hon'ble Supreme Court in Sampat Raj Dugar and another, (1992) 2 SCC 66, held that when the person did not pay for and receive the documents of the title, he did not become the owner of the said goods. The Hon'ble Supreme Court in Golden Silk Mills Ltd., (1999) 8 SCC 744, held that the taxable event is reached at the time when the goods reached a custom barrier and the bill of entry for home consumption is filed. Hon'ble Bombay High Court in Kabul Textiles, 2006 (206) E.L.T. 1173 (Bom), held that the provisions of Section 111(m) can be invoked only when there is a misdeclaration of imported goods in the bill of entry. The said provision will not be attracted in the absence of bill of entry. Any description in the invoice or the Bill of Lading or import manifest is not sufficient to call for confiscation liability of the goods under Section 111(m) of the Act.

9. The Ld. AR relied on certain case laws, we have examined these decisions. In MMIC, the Hon'ble Supreme Court vide their judgment dated 25-9-1998 examined the provisions of Central Sales Tax Act with reference to sale or purchase of goods in the course of import into territory of India. In that connection, the Apex Court held that the Bill of Lading represents the goods and transfer of it operates as transfer of goods. We note that in the present case, the appellants contested the purchase of the impugned goods from the foreign supplier. The Bill of Lading which was received by the appellant did not result in filing of any other bill of entry. In J.V. Gokal & Co. (Pvt.) Ltd., 1960 AIR 595, the Hon'ble Supreme Court was again dealing with the Sales Tax provisions. The Apex Court held that Bill of Lading represents the goods and transfer of it operates as transfer of goods. As already mentioned, the appellants are not contesting about the receipt of Bill of Lading and follow up by the CHA. Their only claim is that they have not placed any orders for the said consignment and they do not own the said item. They have no intention of claiming ownership of said item.

10. The Ld. AR also referred to the decision of the Tribunal, Uniflex Cables Ltd., 1995 (77) E.L.T. 737 (Tri.-Bom.). The Tribunal in the said case was examining supply of goods from outside India to a fictitious firm not having any import code number. In the said case, the investigation indicated the status of the importer and his relationship with the supplier which led to the conclusion that the goods have been imported in unauthorised manner by a fictitious firm having no import code number. We note that the facts of the present case cannot be applied to any of

the decisions relied upon by the Revenue.

11. Considering the above analysis, we find that there is no legal basis to hold the appellant as an "importer" in terms of Section 2(26) of the Act in the facts and circumstances of the case. As such, no duty demand or penal consequences applicable with reference to the impugned goods can be confirmed against the appellant. The penalty under Section 112(a) and (b) can be imposed on any person, -

(a) 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 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

12. In the present case, the appellant did not file bill of entry or did not commit any act or omission which will render the goods liable for confiscation. They were contesting their connection/ownership of the impugned goods. The only evidence available is Bill of Lading issued in the name of the appellant. As already noted, the appellant did not make any attempt to clear the goods or abet any other person in clearing the goods, We find the evidences, as discussed in the impugned order, are not sufficient to bring in penal consequences under Section 112 of the appellant.

13. In view of above discussion and analysis, we set aside the impugned order insofar as it relates to duty liability or penalty as confirmed against the appellant. The appeal is allowed to this extent."

4.3 The above decision is squarely applicable to the facts and circumstances of the present case where the noticee have neither imported nor filed any bill of entry.

4.4 Hence, the notice runs contrary to the above decision and hence, the noticee would urge upon your Honour to follow the above decision and drop the proceedings initiated against the noticee.

5. Further, the noticee would further say and submit that the presumption made by the department regarding re-import of rice that were exported earlier is wholly incorrect and grossly erroneous. The admitted position, as per para 3 of the notice is:

"The goods were found in jumbo bags and there were no marks and numbers found on the same..."

5.1 Since goods found imported by department does not bear any marks and numbers, it is not correct to assume, presume or conclude that these were the same goods that were exported by the noticee after due assessment and proper verification by the department about one year prior to re-import.

5.2 Without proper identification of goods based on verifiable marks, numbers, packing details, etc., it is not appropriate, correct, proper and lawful for the department to allege that goods exported by the noticee under shipping bills detailed in the notice are the same that have arrived at Mundra without any corresponding intimation or instruction received by the noticee from any overseas entity, including shipper mentioned in the bill of lading.

5.3 Thus, the noticee would say and submit that they have nothing to do with the imported goods and they are not responsible for import thereof.

5.4 For this reason also, the impugned notice is not tenable in the eyes of law and hence, the same is liable to be vacated.

6. The noticee would also say and submit that provisions of section 23(2) of Customs Act, 1962 that are reproduced in the notice are not applicable to this case inasmuch as noticee is neither owner nor importer of the goods under consideration. Since noticee is neither owner nor importer of imported goods, he was not required to relinquish the same in the first place and therefore, the proposition contained in the notice to deny relinquishment and propose penalty against noticee is mis-conceived and not relevant at all.

7. Thus, your Honour may kindly appreciate from the above submissions that the notice is not tenable on merit as well as on facts and hence, the same is liable to be dropped forthwith.

8. The notice wish to be heard in person,

Prayer:-

It is prayed that the above submission may be given due consideration and Show Cause Notice No. S/Disp-208 to 211/APSEZ/AUCTION/MICT CFS/2017-18 dated 02.11.2018 issued to M/s. Punjab Basmati Rice Ltd., Amritsar, Punjab may be dropped.

10. Personal Hearing:-

M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar Pin code - 143 001 submitted their written submission dtd.31.05.2019, received by this office on 06.06.2019 (wherein the noticee wished to be heard in person.

Accordingly, M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar 143 001, have been given personal hearing on 22.05.2019, 12.02.2020, 19.02.2020 and 03.03.2020, vide this office letters dtd.08.05.2019, 04.02.2020, 13.02.2020 and 20.02.2020 respectively. However, PH letters were returned undelivered to this office with reason mentioned as "Closed" and No-body appeared on behalf of the Noticee before adjudicating authority for personal hearing.

Discussion and Findings:

11 I have carefully gone through the Show Cause Notice dated 30.01.2019 and the written defense reply dated 31.05.2019 filed by the Noticee. Main issues to be decided in the instant case come down to the following:-

(i) Whether the goods "Basmati Rice (Zafrani Brand Basmati rice)" imported by the Noticee i.e. M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar, Punjab – 143001 are liable to confiscation under Section 111(d) of the Customs Act, 1962, as amended,

(ii) Whether the Noticee is liable to penalty under Section 112(a) *ibid*, &

(iii) Whether the Noticee can relinquish his title to the goods under section 23(2) *ibid*.

12. In the Show Cause Notice, it is alleged that the consignment of "Basmati Rice (Zafrani Brand Basmati rice)" imported by the Noticee are liable to confiscation as the same are imported in contravention of para 2.20 of the Foreign Trade Policy 2015-20 issued under Section 5 of the Foreign Trade (Development & Regulation) Act, 1992. In this regard, the SCN alleges that this is a case of re-import of the export goods "Basmati Rice (Zafrani Brand Basmati rice)" vide Bills of lading Nos. EX24247 dated 09.05.2017, EX24126 dated 25.05.2017, EX24478 dated 01.06.2017 and EX24385 dated 25.05.2017. In these Bills of lading it is clearly indicate that the impugned goods were exported vide Shipping Bills No. 1618619 dated.14.10.2016, 1449978 dated 14.10.2018, 1240653 dated 24.09.2016 and 1240653 dated 24.09.2016 respectively. As this is a case of re-importation of the Export goods, it will be subject to section 20 of the Customs Act, 1962 which reads;

"Re-importation of goods:- If goods are imported into India after exportation there-from, such goods shall be liable to duty and be subject to all the conditions

and restrictions, if any, to which goods of the like kind and value are liable or subject, on the importation thereof."

Thus, the re-import of impugned goods is subject to all the conditions and restrictions, if any, as applicable to import of the goods of the like kind and value.

The Noticee, in their written defence reply has not denied the fact that the impugned goods i.e. "Basmati Rice (Zafrani Brand Basmati rice)" were exported vide Shipping Bills No. 1618619 dated 14.10.2016, 1449978 dated 14.10.2018, 1240653 dated 24.09.2016 and 1240653 dated 24.09.2016 and has been sent back the same to Noticee at Mundra Port vide Bills of lading Nos. EX24247 dated 09.05.2017, EX24126 dated 25.05.2017, EX24478 dated 01.06.2017 and EX24385 dated 25.05.2017.

In terms of para 2.20 of the Foreign Trade Policy 2015-20, import of "Basmati Rice (Zafrani Brand Basmati rice)" is allowed through State Trading Enterprises (Food Corporation of India in the instant case) or any other person who is granted an authorisation to import in this regard by the DGFT.

Since the person in whose name the Bills of lading have been issued is neither a STE nor having any authorisation for import of the impugned goods i.e. "Basmati Rice (Zafrani Brand Basmati rice)", issued by the DGFT, the said goods are liable to confiscation under section 111(d) of Customs Act, 1962.

In this regard, the Noticee, vide their defence reply dtd.31.05.2019, has contended that they are neither owner nor importer of the goods. They have not imported the goods & not filed any Bill of Entry for clearance of the said goods. Since they are neither owner nor importer of the goods, they do not require to relinquish title to the goods. They have cited Judgement of the Hon'ble Tribunal, New Delhi in the matter of M/s. R.S. Impex v/s Commissioner of Customs, New Delhi to show that even if Bills of lading is in the name of the Noticee, they cannot be held to be an "importer", which is defined under Section 2(26) of the Customs Act, 1962, as "Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer." Using this case law, they have tried to get away from the imposition of penalty.

The Noticee has not denied that their name is mentioned on the subject Shipping Bills. Noticee has not denied that the Shipping Bills nos. are mentioned on the subject Bills of lading. Noticee has not denied that the goods mentioned on Bills of lading are the same as mentioned in the relevant Shipping Bills. What they have contended is that they have exported the goods in "20 lbs bags" & the goods which were re-imported were found in "jumbo bags" and there were no marks and numbers found on the imported goods. The Noticee has failed to bring out the marks & nos. of the consignments at the time of exportation to prove their point that the export goods did have marks & nos. And, now, at the time of re-importation, the said marks & nos. affixed on the packages (the export goods being 'Basmati Rice' having no natural markings) at the time of exportation are considered for comparison with marks & nos. on the packages at the time of re-importation. In the instant case, at the time of re-importation, no marks & nos. are found on the packages. Therefore, if there are no marks & nos. at the time of export, there will be no marks & nos. at the time of re-import. This does not mean that the goods are not the same, which are exported earlier. (There are other factors also for establishing identity of the goods).

The cargo was detained & rejected by US FDA. And most likely it is the same goods which were exported and due to rejection, the same was shipped back to Mundra Port.

This fact is also supported by a letter Dtd.12.07.2017 written by the Noticee to the Deputy Commissioner, Dock Examination, Customs House Mundra. This letter is pertaining to some other Shipping Bill & some other Bill of Lading which is not part & parcel of the Show Cause Notice but the details given in that letter is covering all the Bills of Lading, Shipping Bills and invoice nos. covered in this notice. And from that letter this is clear that these are the same

goods which were exported and come back and these goods are pertaining to this particular exporter and importer and therefore he is liable to penalty.

Further, in terms of section 2(23) of the Customs Act, 1962 "import, with its all grammatical variations and cognate expressions, means bringing into India from a place outside India". And applying this section of the Customs Act, 1962, re-importation is as good as importation. Thus the Noticee has not been able to effectively counter the allegation that the impugned goods are subject to conditions and restrictions imposed by para 2.20 of the Foreign Trade Policy 2015-20. In this regard, it is pertinent to mention section 2(33) of the Customs Act, 1962 which reads;

"Prohibited goods, means any goods the import and export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with".

As the impugned goods have not complied with the Conditions and Restrictions prescribed vide para 2.20 of Foreign Trade Policy 2015-20, the goods are prohibited goods in terms of section 2(33) of the Customs Act, 1962.

In terms of section 111(d), "any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force" are liable to confiscation. In the instant, there is no denying the fact that the impugned goods "Basmati Rice (Zafrani Brand Basmati rice)" are brought within the Indian Customs waters. Also there is no denying the fact that the conditions and restrictions prescribed vide para 2.20 of the Foreign Trade Policy 2015-20 are not complied with in respect of the subject goods and thus the goods are prohibited goods as defined under section 2(33) *ibid*.

As regards imposition of penalty on the importer under Section 112(a) of the Customs Act, 1962, the Noticee contends that they are neither owner nor importer of the impugned goods. Since they are neither owner nor importer of the impugned goods, they are not required to relinquish the title of the goods in the first place. However, as discussed and amply brought out hereinbefore, the impugned goods (being prohibited goods as conditions of para 2.20 of the Foreign Trade Policy 2015-20 are not complied with) are liable to confiscation under section 111(d) and therefore the Noticee (being importer) is liable to penalty under section 112(a) *ibid* for importation of improper goods.

The show cause notice alleges that the Noticee cannot relinquish their title to the said imported goods as they have imported the goods of restricted category for which they have not submitted the required DGFT authorisation. In this regard it is pertinent to reproduce para 2.20 of the Foreign Trade Policy 2015-20 and section 23(2) of the Customs Act 1962 as below:-

(i) Para 2.20 of the Foreign Trade Policy 2015-2020:-

(a) *State Trading Enterprises (STEs) are governmental and non-governmental enterprises, including marketing boards, which deal with goods for export and /or import. Any good, import or export of which is governed through exclusive or special privilege granted to State Trading Enterprise (STE), may be imported or exported by the concerned STE as per conditions specified in ITC (HS). The list of STEs notified by DGFT is in Appendix-2J.*

(b) *Such STE(s) shall make any such purchases or sales involving imports or exports solely in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale in a non-discriminatory manner and shall afford enterprises of other countries adequate opportunity, in accordance with customary business practices, to compete for participation in such purchases or sales.*

(c) *DGFT may, however, grant an authorisation to any other person to import or export any of the goods notified for exclusive trading through STEs.*

(ii) Section 23(2) of Customs Act, 1962:-

"The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon".

"Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force".

In terms of para 2.20 (c) of Foreign Trade Policy 2015-20, the DGFT has not granted any authorisation to the Noticee to import the impugned goods "Basmati Rice (Zafrani Brand Basmati rice)". However they have imported the said restricted goods and thus they have committed an offence under Customs Act, 1962. Therefore they cannot be allowed to relinquish their title to the impugned goods. The Noticee has not replied to the same vide their written submission dated 31.05.2019 and thus, they cannot relinquish their title to the impugned goods.

Therefore, they are liable to penalty under section 112(a), *ibid* for improper importation of impugned goods which are found to be liable to confiscation under section 111(d), *ibid*.

On the basis of the above discussions and findings, I pass the following order:-

-:ORDER:-

1. I confiscate the goods "Basmati Rice (Zafrani Brand Basmati rice)" imported vide Bill of Lading No. EX24247 dated 09.05.2017, EX24126 dated 25.05.2017, EX24478 dated 01.06.2017 & EX24385 dated 25.05.2017 valued Rs.18,80,000/- (Rupees Eighteen Lakh Eighty Thousand only) under section 111(d) of Customs Act, 1962. However, I give the importer an option to redeem the goods on payment of fine of Rs.3,80,000/- (Rupees Three Lakh Eighty Thousand Only) under Section 125 of the Customs Act, 1962.
2. I impose, a penalty of Rs.1,90,000/- (Rupees One Lakh Ninety Thousand Only) on M/s. Punjab Basmati Rice Ltd., Sangrana Sahib, Tarn Taran Road, Amritsar, Punjab – 143001 under section 112(a) of Customs Act, 1962.
3. This order is passed without prejudice to any other action which may be contemplated / taken against the importer or any other person in terms of provisions of the Customs Act, 1962 and / or any other law for the time being in force.

[Handwritten Signature]
26/6/2020

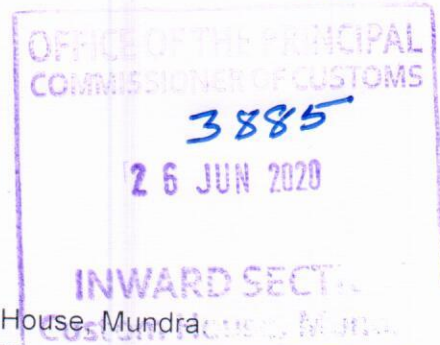
[Sushant Kumar]

Additional Commissioner (Disposal)
Custom House, Mundra

F.No.S/Disp-208 to 211/APSEZ/AUCTION/MICT.CFS/2017-18

Date:26.06.2020

To,
M/s. Punjab Basmati Rice Ltd.,
Sangrana Sahib, Tarn Taran Road,
Amritsar, Punjab.
Pin Code – 143 001



Copy to:-

1. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra.
- ✓ 3. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra.
4. M/s. Mundra International Container Terminal Pvt. Ltd. (MICT) CFS, Mundra, Kutch - 370421 for Information.
5. Guard File.