



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	फ़ाइल संख्या/ File No.	F.No.VIII/48-04/ADJ/ADC/MCH/18-19
B	आदेश में मूल सं./ Order-in-Original No	MCH/ADC/UBR/55/2018-19
C	पारित कर्ता/ Passed by	Shri U. B. Rakhe, Additional Commissioner, Customs, Custom House, Mundra
D	आदेश की दिनांक/Date of order	27.07.2018
E	जारी करने की दिनांक/Date of issue	27.07.2018
F	एस०सी०एन० सं० एवं दिनांक/ SCN No. & Date	F.No. VIII/48-195/Gr.I/Misc/MCH/18-19 Dated 14.06.2018
G	नोटीसी/ पार्टी/ निर्यातक Noticee/Party/Exporter	M/s Keyur Industries, Gulab Park, S. T. Road, Sidhpur, Gujarat.

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 (1) 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 (1) (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 रोड़, अहमदाबाद 380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS),  
Having his office at 7<sup>th</sup> 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 सं०-6 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 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 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, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Tribunal 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 :- Show Cause Notice F.No. VIII/48-195/Gr.I/Misc/MCH/18-19 Dated 14.06.2018 issued to M/s Keyur Industries, Gulab Park, S. T. Road, Sidhpur, Gujarat.**

## Brief facts of the case

M/s Keyur Industries, Gulab Park, S.T. Road, Sidhpur, Gujarat, holding IEC Code No. 089107321 (herein after referred to as Importer for sake of brevity) presented Bill of Entry No. 5773432 dated 28.03.2018 through their CB M/s. Soham Logistics, Gandhidham seeking clearance of Re-imported Psyllium Husk Powder 95% Mesh(Isabgol Plantagoovata) due to rejection by Buyer.

Sr. No.	Bill of Entry No & date	Description of Goods	Assessable Value & QTY	Invoice No & Date	BL No & date	Re-import against Shipping Bill No & date
1	5773432 dated 28.03.2018	Re-imported Psyllium Husk Powder 95% Mesh (Isabgol Plantagoovata) due to rejection by Buyer.	35,98,597/- 8000 Kgs	734 dtd. 07.06.2017	X18B0052 4MUD001 NI	6712028 DTD. 13.06.2017

2. Importer has produced letter dated 15.01.2018 of Consignee- M/s. Berlin Pharmaceutical Industry Co. Ltd, Thailand wherein it is stated that "due to mesh size does not meet with the specification and requirement; they have returned the consignment back.

3. The Bill of Entry was subjected to second check appraisalment. Accordingly, the cargo was examined by the Docks Examination Officers under DC Supervision, in the presence of authorized person of CB. During the examination, it is noticed that the expiry date on the goods has been mentioned as May 2018".

4. Further, the importer has produced FSSAI Certificate (Non Compliance) CHM No: 1033/2018-19 dtd. 27.04.2017 and Corrigendum Certificate No: CHM No: 1033/2018-19 dtd. 08.05.2018 under which it is reported that "during visual examination the cargo DO NOT CONFIRM to the of the standards and provisions laid down under regulation No. 5(6) of the Food Safety and Standards (Import) Regulations 2017 read with the provisions of the Food Safety & Standards Act, 2006 as well as other Rules/Regulation made there under, as the import consignment have shelf live, less than three months at the time of import, thus, the import consignment is not allowed to be cleared from customs and falls under the restricted category.

5. As per Food Safety and Standards (Import) Regulations, 2017 “shelf life” means the period between the date of manufacture and the “Best Before” or “Date of expiry” whichever is earlier as printed on the label;

6. Further relevant regulation 5(6) of Chapter – III of Food Safety and Standards (Import) Regulations, 2017 which deals with Clearance of Imported Food by the Food Authority, is as below:

**5(6) *The custom shall not clear any article of food unless it has a valid shelf life of not less than sixty per cent or three months before expiry whichever is less at the time of import***

7. In this instant case, it appeared that the shelf life of the said imported cargo is less than 3 months at the time of import and therefore, not fulfilling the condition laid down under Regulation 5(6) of the Food Safety & Standards (Import) Regulation 2017. Accordingly, FSSAI has forwarded the Non Compliance Certificate bearing No. CHM No.:1033/2018-19 dated. 08.05.2018 under which it is certified that for the imported cargo against the above said Bill of Entry do not confirms to the standards and provisions laid down under Regulation 5(6) of the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made there under, thus, the import consignment in absence of the FSSAI clearance certificate, the said imported goods is not allowed to be cleared from customs and falls under the restricted category.

8. The relevant provisions of the Customs law relating to import of such restricted goods into India is govern by Customs Act, 1962. The liability of the goods to confiscation and the persons concerned to penalty for illegal importation under the provisions of the Customs Act, 1962 and other Laws for the time being in force are summarized as under ;

**Section 111. Confiscation of improperly imported goods, etc.** – *The following goods brought from a place outside India shall be liable to confiscation:*

*(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;*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed*

*unless the non-observance of the condition was sanctioned by the proper officer;*

**Section 112. Penalty for improper importation of goods, etc.** – 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”*

*(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 not exceeding the value of the goods or five thousand rupees whichever is the greater.*

9. At the outset, it appeared that the imported has violated the conditions laid down under Regulation 5 (6) of Food Safety and Standards (Import) Regulations, 2017 as discussed in the foregoing paras read with the provisions of Section 111(d) & 111(o) of the Customs Act, 1962. Therefore, the goods imported are liable to be held for confiscation under section 111(d) read with 111 (o) of the Customs Act, 1962 and for the omission/commission on the part of the importer is also liable for penal action under Section 112(a)(i) of Customs Act, 1962.

10. The importer has availed the drawback of Rs.1,54,626/- at the time of export under Shipping Bill no. 6712028 DTD. 13.06.2017 under Rule 3 of Drawback Rules, 2016 however the importer has deposited the amount equivalent to drawback Rs. 1,54,626/- vide challan no. 2022099704 dtd. 31.03.2018 as per conditions of notification no. 046/2017.

11. Based on the above findings, M/s Keyur Industries, Gulab Park, S.T. Road, Sidhpur, Gujarat was called upon to Show Cause under F.No. VIII/ 48-195/Gr.-I/Misc./MCH/18-19 Dated 14.06.2018 answerable to the Additional Commissioner of Customs, Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra as to why;-

i. The said Re-imported goods Psyllium Husk Powder 95% Mesh (Isabgol Plantagoovata) imported against above said Bill of entry bearing no. 5773432/28.03.2018 for clearance of 8000 Kgs. having assessable value of Rs. 35,98,597/- and duty liability Rs. 1,54,626/- equivalent to the export incentive availed as per notification no. 046/2017, imported in violation of standards and provisions laid down under Regulation 5(6) of the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made

- there under, shall not be held liable for confiscation as per provisions of Section 111 (d) read with Section 111 (o) of Customs Act, 1962.
- ii. The amount equivalent to export incentive Rs. 1,54,626/- availed at the time of export under Shipping Bill no. 6712028 DTD. 13.06.2017 should not be recovered as the goods under reference have been re-imported after export. The amount of Rs. 1,54,626/- deposited by the importer should not be appropriated against the demand of duty drawback under Rule 16 A of the Drawback Rules, 2016.
  - iii. Penalty should not be imposed on them under Section 112 (a) (i), for the reasons discussed above.

**Defence reply & Personal hearing:**

12. M/s Keyur Industries, Sidhpur, Gujarat in reply to above mentioned Show Cause Notice vide letter dated 03.07.2018 submitted that they filed Bill of Entry No. 5773432 dated 28.03.2018 for re-import of cargo rejected by buyer; that re-imported psyllium husk powder has been rejected due to mesh size which can be solved by re-processing of material or may be used as cattle feed; that the expiry date has been mentioned as per customer request but the normal expiry date is 2 to 3 years. Subsequently, Personal Hearing in the matter is fixed on 23.07.2018 wherein Shri Jitesh M Patel, Partner of M/s Keyur Industries, Sidhpur appeared and submitted further submission and stated that the goods were examined under second check after surrender of drawback and MEIS benefit claimed with interest ; that "psyllium Husk" is a natural product and expire date mentioned on the product and invoice only as per buyer's requirement and requested to allow them for testing of the goods as FSSAI Lab and based on the FSSAI result, take the decision in the matter.

**Discussion and findings:**

13. I have gone through the case records and the Show Cause Notice, relied upon documents, import documents, submissions made in written reply as well as submission made during personal hearing.

14. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided: -

- (i). Whether the Importer has violated standards and provisions laid down under regulation 5(6) of the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made there under;
- (ii). Whether the goods imported vide B/Es bearing no. 5773432 (8000 Kgs) dated 28.03.2018 having assessable value of Rs.35,98,597/- are liable

for confiscation under the provisions of Section 111 (d) read with Section 111 (o) of the Customs Act, 1962;

- (iii). Whether the amount equivalent to export incentive of Rs. 1,54,626/- availed at the time of export under Shipping Bill no. 6712028 Dated. 13.06.2017 may be recovered as the goods under reference have been re-imported after export and the amount of Rs. 1,54,626/- deposited by the importer may be appropriated against the demand of duty drawback under Rule 16 A of the Drawback Rules, 2016.
- (iv). Whether penalty can be imposed under the provisions of Section 112(a) (i) of the Customs Act, 1962;

15. I find that importer had filed Bill of Entry No. 5773432 dated 28.03.2018 for clearance of 8000 Kgs of re-imported Psyllium Husk Powder 95% Mesh (Isabgol Plantagoovata). The officers of Customs, Mundra drawn sample for the said consignment and forwarded to FSSAI for confirmation whether the standards and provisions laid down under Regulation 5(6) of the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made there under fulfilled or otherwise.

16. The officer of FSSAI after examination of the goods, submitted their report vide FSSAI Certificate bearing No. CHM No.:1033/2018-19 dated 27.04.2017 & 08.05.2018 and from the report/certificate, I find that said Bill of Entry do not confirms to the standards and provisions laid down under Regulation 5(6) of the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made there under as the import consignment have shelf life less than three months at the time of import.

17. I find from the Bill of Lading No.X18B00524-MUD-001NI dated 27.02.2018 pertaining to the Bill of Entry No. 5773432 dated 28.03.2018 for re import of goods exported vide shipping Bill No. 6712028 dated 13.06.2017 wherein Mfg. date & Expiry Date of the product is mentioned as JUNE-17 and MAY 18 respectively, which further establishes the fact that expiry date of the imported product is less than three months of import and the goods is re imported after the expiry date. Thus, I find that the goods re imported vide bills of Entry No. 5773432 dated 28.03.2018 manufactured in June-2017 and expiry date mentioned as May-2018, Hence, importer contention that the said good was rejected by overseas buyer due to mesh size which can not be accepted and the importer may use the said goods for re-processing of material or may be used as cattle feed and the expiry date has been mentioned as per customer

request but the normal expiry date is 2 to 3 years is afterthought on initiation of adjudication proceedings. Further, imported food items needed to be in compliance with the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made there under which read as "*The custom shall not clear any article of food unless it has a valid shelf life of not less than sixty per cent or three months before expiry whichever is less at the time of import*" and since the Imported items do not fulfill the stipulated FASSAI regulation norms, the importer contention does not hold good for clearance of the re-imported item and needed to be disposed off by way of destruction.

18. As regards the importer contention regarding re-testing of the sample, I find that as per the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules, the appeal is required to be file with review officer and hence, I donot find any reason and reject the request of the importer for re testing.

19 In view of aforesaid, I find that the said importer violated the mandatory FASSAI regulations and thereby the imported goods fall under the restricted category and therefore liable for confiscation under section 111(d) read with 111 (o) of the Customs Act, 1962 and to be destructed as per applicable disposal norms. Also, for the omission/commission on the part of the importer, M/s Keyur Industries, Sidhpur, Gujarat is liable for penal action under Section 112(a) (i) of Customs Act, 1962.

20. Further, I find that the importer had availed the drawback of Rs.1,54,626/- at the time of export under Shipping Bill no. 6712028 Dated 13.06.2017 under Rule 3 of Drawback Rules, 2016 however since the importer has deposited the amount Rs.1,54,626/- (equivalent to drawback amount claimed) the same is appropriated against the demand of duty drawback under Rule 16 A of the Drawback Rules, 2016.

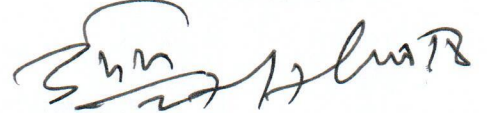
21. In view of the forgoing discussions and findings, I accordingly pass the following order:-

#### **ORDER**

- I. I order to absolutely confiscate the goods re-imported as Psyllium Husk Powder 95% Mesh (Isabgol Plantagoovata) under BOE nos. 5773432/28.03.2018 for clearance of 8000 Kgs. having assessable value of Rs.35,98,597/- under Section 111 (d) read with Section 111 (o) of

Customs Act, 1962 for violating the clause 5(6) of the Food Safety & Standards (Import) Regulation 2017 read with provisions of the Food Safety & Standards Act, 2006 and Rules made there under. I refrain from imposing redemption fine as the imported goods cannot be cleared without FASSAI certificate and order for destruction.

- II. I order to appropriate Rs. 1,54,626/- paid by the importer equivalent to export incentive of Rs. 1,54,626/- availed by them at the time of export under Shipping Bill no. 6712028 Dated 13.06.2017.
- III. I impose a penalty of Rs. 25,000/- (Rs. Twenty Five Thousand Only) on M/s Keyur Industries, Gulab Park, S.T. Road, Sidhpur, Gujarat under Section 112(a) (i) of the Customs Act, 1962.



(U. B. Rakhe)

Additional Commissioner  
Custom House, Mundra.

Date: 27.07.2018

F. No: VIII/48-04/Adj/ADC/MCH/18-19

To,  
M/s Keyur Industries,  
Gulab Park, S.T. Road,  
Sidhpur, Gujarat

Copy to:

- 1) The Deputy Commissioner, Import Group-I, Customs House, Mundra
- 2) The Deputy Commissioner (RRA), Customs House Mundra.
- 3) The Deputy/Assistant Commissioner (Recovery), Customs House Mundra.
- 4) The Deputy/Assistant Commissioner (Disposal), Customs House Mundra.
- ✓ 5) The Deputy/Assistant Commissioner (EDI), Customs House Mundra.
- 6) Guard File