



OFFICE OF THE COMMISSIONER OF CUSTOMS
 NEW CUSTOMS BLDG, NR. BALAJI TEMPLE,
 KANDLA-370210 (GUJARAT)
PHONE : 02836-271468-469 FAX : 02836- 271467

A	File No.:	S/10-16/Balar/Gr.1/18-19
B	Order-in-Original No.:	KDL/ADC/AK/25/2018-19
C	Passed by:	AJAY KUMAR Additional Commissioner of Customs, Custom House, Kandla
D	Date of order:	12.12.2018
E	Date of issue:	12.12.2018
F	Importer:	M/s.Balar Impex

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), having office at 7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009 in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
8. Proof payment of duty/interest/fine/penalty etc. should be attached with the appeal memo.
9. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

BRIEF FACTS OF THE CASE

M/s. Balar Impex, (PAN No. AARFB 3229R), 101, First Floor, Shri Krishna Market, 65-67, Vithalwadi, Kalbadevi, Mumbai (herereinafter referred to as "the importer" for the sake of brevity) presented Bill of Entry No. 8751237 dated 05.11.2018 through their Customs Broker M/s. Krishna Shipping and Allied Services seeking clearance of 16 items valued at Rs.19,81,046.32 imported vide Invoice No. MUT/1002/18 dated 02.10.2018 and Master Bill of Lading No. SKYIXY4420 dated 14.10.2018.

1.1 The goods were examined on 1st check and as the two items "Nescafe Coffee" and "Fabric Softner (Comfort)" valued at Rs.5,89,214.92 were found as per the declaration, these were given out of charge and for the remaining following item Nos. from 1 to 14 samples were forwarded to FSSAI for necessary action and "No Objection" .

Item	Description	Quantity (In CTN)	Value (In Rs.)
1	ALMIRAI POWDER (2.5 KG)	50	132195.66
2	ALMIRAI POWDER (400GMS)	25	41547.21
3	ALMIRAI DESERT CREAM (170 GM)	50	22662.11
4	ALMIRAI BREAD SPREAD (900 GM)	25	37770.19
5	ALMIRAI BREAD SPREAD (500gm)	50	98202.49
6	ALMIRAI BREAD SPREAD (200gm)	175	132195.66
7	ALMIRAI TIN (200GM)	50	52878.26
8	ALMIRAI TIN (113 GM)	25	15108.07
9	ALMIRAI SLICE(200 GM)	75	67986.34
10	ALMIRAI CUBE(200 gm)	25	45324.22
11	ALMIRAI TRIANGLE CUBE(240 GM)	25	24550.62
12	ALMIRAI TRIANGLE CUBE(120 gm)	25	26439.13
13	NIDO POWDER (2.5 kg)	200	528782.62
14	NIDO POWDER (400gm)	100	166188.82
	Total		1391831.40

The FSSAI report dated 14.11.2018 confirmed the presence of Milk and Milk products in item Nos. 1 to 14.

1.2 The import of live stock product is regularised vide Notification No. S.O.2666 (E) dated 16.10.2014 issued by Department of Animal Husbandry and Dairying and Fisheries under Section 2 and Section 3A of the Live-stock Importation Act, 1898 (9 of 1898) superseding earlier notification S.O. 655 (E) dated the 07th July, 2001.

In the said Notification the word "Live-stock product has been defined and accordingly Milk and Milk products are placed at (iv) as a live-stock product. In the Schedule attached to the Notification is prescribed the procedure to be followed wherein it is clarified that (1) No live-stock product shall be imported into India without a valid sanitary import permit issued under clause (3).

It is further clarified in Para (4) of the Notification that *"all live stock products shall be imported into India through the seaports or airports located at Delhi, Mumbai, Kolkata, Chennai, Bangalore and Hyderabad where the Animal Quarantine and Certification Services Station are located.*

1.3 From the above, it is clear that the above referred products cannot be imported through Kandla port as no AQC station is stationed at Kandla. Moreover the importer has also not



produced any Sanitary Import Permit, as prescribed in the Notification dated. 16.10.2014 from the proper authority.

1.4 Further, the subject goods are required "No Objection Certificate" from AQCS (Animal Quarantine & Certification Services and are still pending for clearance in want of AQCS NOC from the Animal Quarantine Department. The importer vide their letter dated 06.12.2018 also informed that there is little possibility to get said certificate from concerned department.

1.5 CBEC by its Circular No. 13 date 02.03.2007 has specified procedure of clearance of Livestock and Live-stock products. Para 5 of the said Circular stipulates that:

"in view of recent concerns over spreading of Evian Influenza, field formations should take abundant precaution while clearing live stock and live-stock products. In view of the concerns of the Department of Animal Husbandry, Dairying and Fisheries in respect of changing status of various countries affecting with Evian Influenza, it would be advisable that all consignments of livestock and livestock products are referred to Quarantine Authorities before customs clearance of goods, regardless of Sanitary Import Permit (SIP) that may have been issued and clearance should be allowed after no objection is received from Quarantine Authorities. If Quarantine Officers are of the view that the consignment needs to be destroyed or re-exported in view of Evian Influenza or any other disease threat, the action taken may subsequently be informed to Quarantine Officers."

1.6 Also Para 2 of the CBEC Circular 43-CBEC dated 06.08.2001 provides as follows:

"2. The notification inter alia provides that import of livestock products will be allowed against valid sanitary import permits issued by Department of Animal Husbandry, Dairying and Fisheries and the same will be allowed from the airports and seaports at Delhi, Mumbai, Kolkata and Chennai only which have Animal Quarantine and Certification Services Stations."

1.7 The Import Export policy condition 4 of Ch. 4 also stipulates that import of all live stock products shall be subject to a sanitary import permit to be issued by Department of Animal Husbandry, Dairying and Fisheries, Government of India, as per Section 3A of Livestock Importation Act, 1898, as incorporated by Live stock Importation (Amendment) Act, 2001 (Act 28 of 2001, 29th August 2001) or amended from time to time.

1.8 In the instant case, the importer has imported the goods as specified in the Table above in violation of Notification No. S.O.2666 (E) dated 16.10.2014 issued by Department of Animal Husbandry and Dairying and Fisheries and CBEC Circular 43-CBEC dated 06.08.2001. These goods are imported against the provisions of Foreign Trade Development Regulation 1992 and thereby the goods are held illegal import under Section 11 of Customs Act, 1962 and liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962.

1.9 The cargo consisting of live stock products valued at Rs. 13,91,831.40 has been imported without valid import permit, without NOC from AQC, imported through a port where AQC station is not stationed thereby failed to observe the conditions of Section-46 (4) of the Customs Act, 1962 and made the goods liable to confiscation under the provisions of Section 111 (d) & (m) of the Custom Act 1962 and have rendered themselves liable to the penal action under the provisions of Section-112(a) of the Customs Act, 1962.

1.10 Further, it is found that the item Nos. 1,2,13 and 14 are containing milk powder, hence the importer is required to produce the ISI certification mark issued by Bureau of Indian Standards at the time of clearance for sale. The relevant provisions of Food Safety and Standards (Import) Regulations, 2017 are reads as under:

Chapter: II Para 3(5)

“condensed milk sweetened, condensed skimmed milk sweetened, milk powder, skimmed milk powder, partly skimmed milk powder and partly skimmed milk sweetened condensed milk shall not be sold except under Indian Standards Institution Certification Mark”

According to the provisions, the importer is required to produce the ISI certification mark issued by Bureau of Indian Standards at the time of clearance for sale for items. However, the importer failed to comply with the provisions of Food Safety and Standards (Import) Regulations, 2017 and therefore the said goods are liable for confiscation under the provisions of Customs Act, 1962.

1.11 Further the importer vide their letter dated 06.12.2018 stated that items No.1 to 14 are AQC product and AQC certificate are pending and a little possibility to get the said certificate from concerned department. As per the nature of cargo and hot climate, the cargo should not be kept in open place so long and it will become damage. By considering above, they requested to permit re-export of the same as early as possible.

SHOW CAUSE NOTICE & PERSONAL HEARING

2. The importers M/s Balar Impex, Mumbai vide its letter reference NIL dated 12.12.2018, accepted that they could not fulfil the condition of BIS (Bureau of Indian Standards) and AQC requirement against the Cargo and requested to permit re-export of goods. They further requested to waive the personal hearing and show cause notice and decide the matter on merit. I find that the condition of principle of natural justice has been complied.

DISCUSSION AND FINDINGS

3. I have carefully gone through the case records and submissions made by the importer and applicable provisions of law. The importer vide letter dated 06.12.2018 stated that items No.1 to 14 are AQC product and AQC certificate are pending and a little possibility to get the said certificate from concerned department. As per the nature of cargo and hot climate, the cargo should not be kept in open place so long and it will become damage. By considering above, they requested to permit re-export of the same as early as possible. I find that 14 items, as mentioned in the Table above, the FSSAI report dated 14.11.2018 confirmed the presence of Milk and Milk products.

3.1 I find that the import of live stock and live stock products is regularised vide Notification No. S.O. 2666(E) dated 16.10.2014 issued by Department of Animal Husbandry and Dairying and Fisheries, which has been superseded by earlier notification S.O. 655(E) dated the 07th July, 2001. As per the Notification the word “Live-stock product has been defined and accordingly Milk and Milk products are placed at (iv) as a live-stock product. In the Schedule attached to the Notification is prescribed the procedure to be followed wherein it is clarified that (1) No live-stock product shall be imported into India without a valid sanitary import permit *issued under clause (3)*.

3.2 The policy condition 4 of Ch.4 of Custom Tariff Act, also stipulates that import of all live stock products shall be subject to a sanitary import permit to be issued by Department of Animal Husbandry, Dairying and Fisheries, Govt. of India, as per Section 3(a) of Livestock Importation Act,1898, as incorporated by Live stock Importation(Amendment)Act,2001 (Act 28 of 2001, 29th August 2001) or amended from time to time.

3.3 In the instant case, the importer has imported the goods as specified in Table above without sanitary import permit as prescribed in the Notification dated 16.10.2014 from the proper authority. These goods are imported against the provisions of Foreign Trade

Development Regulation 1992 and thereby the goods are held illegal import under Section 11 of Customs Act, 1962 and liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962.

3.4 I also find that the subject goods are required "No Objection Certificate" from AQCS (Animal Quarantine & Certification Services) and are still pending for clearance in want of AQCS NOC from the Animal Quarantine Department. CBEC, vide its Circular No. 13 date 02.03.2007 has specified procedure of clearance of Livestock and Live-stock products. Para 5 of the said Circular stipulates that:

"in view of recent concerns over spreading of Evian Influenza, field formations should take abundant precaution while clearing live stock and live-stock products. In view of the concerns of the Department of Animal Husbandry, Dairying and Fisheries in respect of changing status of various countries affecting with Evian Influenza, it would be advisable that all consignments of livestock and livestock products are referred to Quarantine Authorities before customs clearance of goods, regardless of Sanitary Import Permit (SIP) that may have been issued and clearance should be allowed after no objection is received from Quarantine Authorities. If Quarantine Officers are of the view that the consignment needs to be destroyed or re-exported in view of Evian Influenza or any other disease threat, the action taken may subsequently be informed to Quarantine Officers."

It is further clarified in Para(4) of the Notification that "all live stock products shall be imported into India through the seaports or airports located at Delhi, Mumbai, Kolkata, Chennai, Bangalore and Hyderabad where the Animal Quarantine and Certification Services Station are located.

3.5 From the above, I find that the products mentioned in Table above cannot be imported through Kandla port as no AQC station is stationed at Kandla and accordingly violated the conditions laid down in Para 4 of Notification No. S.O. 2666(E) dated 16.10.2014.

3.6 Further, I find that the item Nos. 1,2,13 and 14 are containing milk powder, hence the importer is required to produce the ISI certification mark issued by Bureau of Indian Standards at the time of clearance for sale. The relevant provisions of Food Safety and Standards (Import) Regulations, 2017 is reads as under:

Chapter: II Para 3(5)

"condensed milk sweetened, condensed skimmed milk sweetened, milk powder, skimmed milk powder, partly skimmed milk powder and partly skimmed milk sweetened condensed milk shall not be sold except under Indian Standards Institution Certification Mark"

According to the provisions, the importer is required to produce the ISI certification mark issued by Bureau of Indian Standards at the time of clearance for sale for the products mentioned at Sl. No. 1,2,13 & 14. However, the importer failed to comply with the provisions of Food Safety and Standards (Import) Regulations, 2017 and therefore the said goods are also liable for confiscation under the provisions of Customs Act, 1962.

3.7 I further find that the cargo consisting of above referred live stock products valued at Rs.13,91,831.40 has been imported but failed to produce valid import permit, NOC from AQC, ISI certification mark issued by Bureau of Indian Standards. They also imported through a port where AQC station is not stationed thereby violated the provisions of Para 4 of S.O. 2666(E) dated 16.10.2014 and made the goods liable to confiscation under the provisions of Section 111 (d) & (m) of the Custom Act 1962 and have rendered themselves liable to the penal action under the provisions of Section-112(a) of the Customs Act, 1962.

4. In view of the foregoing discussion and findings, I pass the following order

ORDER

- a. I order for confiscation of offending goods covered under Bill of Entry No. No. 8751237 dated 05.11.2018 valued at Rs.13,91,831.40 under Section 111 (d) and (m) of the Custom Act, 1962. However, I give an opportunity to the importer to redeem the confiscated goods for **re-export** purpose only on payment of redemption fine of Rs. 1,25,000/- (One Lac Twenty Five Thousand only) under Section 125 of the Customs Act, 1962.
- b. I also impose a penalty of Rs. 1,00,000/- (One Lakh only) on the importer M/s Balar Impex under Section 112(a) of Customs Act, 1962.

5. This order is passed without prejudice to the 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 of Customs

Custom House, Kandla

Dated:12.12.2018

F.No.S/10-16/Balar/G.1/18-19

To,

M/s. Balar Impex,
101, First Floor, Shri Krishna Market,
65-67, Vithalwadi, Kalbadevi, Mumbai

Copy to:

1. The Commissioner of Customs, Kandla
2. The Deputy Commissioner (RRA), Custom House Kandla.
3. The Deputy Commissioner (Recovery), Custom House Kandla.
4. ✓ Guard file.