



**सीमा शुल्क आयुक्त का कार्यालय,  
नवीन सीमा शुल्क भवन, नया कांडला ।**

**OFFICE OF THE COMMISSIONER OF CUSTOMS,  
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)  
Phone No: 02836-271468/469, Fax No. : 02836-271467.**

A	फाइल संख्या/ File No.	S/10-52/Adj/ADC/KXOL/2017-18
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/33/2018-19
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	09.01.2019
E	जारी करने की दिनांक/Date of issue	09.01.2019
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	S/10-52/Adj/ADC/KXOL/2017-18, Dated 04.07.2018
G	नोटीसी/ पार्टी Noticee/Party	1. M/s. Kitchen Xpress Overseas Ltd, KASEZ, Ganhidham. 2. M/s R.M. Trading Co., Ahmedabad

- यह अपील आदेश संबन्धित को नि शुल्क 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 (1) के अंतर्गत प्रपत्र सीए- 3 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. -3 to:

**"सीमा शुल्क आयुक्त (अपील), कांडला**

**वीं मंजिल 7, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009"**

**"THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA**

**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 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 2/- 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 2/- 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. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ इयूटि/ 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 नियम (अपील), और सीमा शुल्क अधिनियम 1982, 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, 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.





### BRIEF FACT OF THE CASE

M/s Kitchen Xpress Overseas Limited, (herein after also referred to as 'KXOL') is situated at Plot No.623, Shed No. 402, New Area, Kandla Special Economic Zone, Gandhidham, Kutch to whom Letter of Approval (LOA) dated 24.06.2010 was granted vide F.No. KASEZ/IA/006/2010-11 by the Joint Development Commissioner, Kandla SEZ under Section 15 of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ Unit and carry out authorized operations of manufacturing and trading activity of processed Grains and Spices. The said LOA was further extended till 31.05.2021 vide letter dated 29.08.2016 by the Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.

1.1 On scrutiny of the documents for the period 2012-13 to 2016-17, it was learnt that, KXOL cleared/removed Pulses Grinding (Atta of Pulses) - Powder valued at Rs.20,96,880/- to various customers into Domestic Tariff Area (DTA) by classifying the same under Chapter Heading 07139099 of the Customs Tariff Act,1975 (hereinafter also referred to as "CTA,1975") , at Nil rate of duty, by claiming full duty exemption under Notification No.12/2012-Customs dated 17.03.2012 under Sr. No.21.

1.2 The relevant part of the notification 12/2012-Customs dated 17.03.2012 reads as below:

Sr. No.	Chapter or Heading or Sub-heading or tariff item	Description of Goods	Standard Rate	Additional Duty rate	Condition No.
20	0713	Pulses except chickpeas (garbanzos)	10%	-	-
21	0713 except 0713 2000 and 0713 4000 (old-0713)	Pulses except chickpeas (garbanzos) and lentils [Old-Pulses]	NIL	-	-
21A	0713 2000	Chickpeas (garbanzos)	NIL	-	-
21B	0713 4000	Lentils	NIL	-	-

1.3. The tariff item 07139099 covers only "Dried leguminous vegetables, shelled, whether or not skinned or split". The serial number 20 extended exemption to pulses except chickpeas (garbanzos). The Sr. No. 21 of the said notification extended exemption to "Pulses except chickpeas (garbanzos) and lentils". The Sr. No. 21A extended exemption to "Chickpeas (garbanzos)". The Sr. No. 21B extended exemption to Lentils. Thus, only pulses, chickpeas (garbanzos) and Lentils, covered under CTH 0713 of CTA,1975 were exempted under the above entries. The exemption under serial no. 21 of the notification No.12/2012-Customs was not



available to **Pulses Grinding (Atta of Pulses) – Powder**. Therefore, under the said entry at serial number 21 of the notification No. 12/2012-Customs dated 17.03.2012, duty exemption was available only to pulses covered under CTH 0713 of CTA,1975 and it did not cover "**Pulses Grinding (Atta of Pulses) – Powder**"

1.4 The Customs Tariff Head 0713 of CTA,1975 covers "*Dried leguminous vegetables, shelled, whether or not skinned or split*" which is more generally termed as pulses as described in the said exemption notification No.12/2012-Customs dated 17.03.2012. The Pulses Grinding (Atta of Pulses) – Powder cleared/removed by KXOL are not classifiable under CTH 0713. The goods Pulses Grinding (Atta of Pulses) – Powder cleared/removed by the said unit are appropriately classifiable under CTH11061000 as the same heading covers "*of the dried leguminous vegetables of heading 0713 under the broad heading flour, Meal and Powder of the dried leguminous vegetables of heading 0713 of sago or of roots or tubers of heading 0714 or of the products of Chapter 8*". At the relevant time, Pulses Grinding (Atta of Pulses) – Powder attracted BCD @ 30%, CESS @ 3% and SAD @ 4% (aggregate 36.136%). This mis-classification has resulted in evasion of Customs Duty of Rs.7,57,729/- ( detailed in Annexure-A to this Show Cause Notice)

1.5 The activities of admission and clearance of goods by SEZ Units having valid approval granted under Section 15 of the SEZ Act, 2005 and Rule 18 of the SEZ Rules, 2006 are regulated as per the provisions and procedures contained in SEZ Act, 2005, and Rules made there under.

The relevant legal provisions under SEZ Act, 2005 and SEZ Rules 2006 are reproduced as under:

- (i) **Section 30 of SEZ Act, 2005:-** Subject to the conditions specified in the rules made by the Central Government in this behalf:-
- (a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of Customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and
- (b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.
- (ii) **Chapter V: Conditions subject to which Goods may be removed from a Special Economic Zone to the Domestic Tariff Area ;**
- Rule 47 of SEZ Rules,2006: Sales in Domestic Tariff Area**
- (1) A Unit may sell goods and services including rejects or wastes or scraps or remnants or broken diamonds or by products arising during the manufacturing process or in



connection therewith, in the Domestic Tariff Area on payment of Customs duties under Section 30, subject to the following conditions, namely :-

- (a) Domestic Tariff Area sale under sub-rule (1), of goods manufactured by a Unit shall be on submission of import licence, as applicable to the import of similar goods into India, under the provisions of the Foreign Trade Policy :

*Provided that goods imported or procured from the Domestic Tariff Area and sold as such without being subjected to any manufacturing process shall be subject to the provisions of the Foreign Trade Policy as applicable to import of similar goods into India.*

- (b) Domestic Tariff Area sale under sub-rule (1) of rejects r scrap or waste or remnants arising during the manufacturing process or in connection there-with by the Unit shall not be subject to the provisions of Import Trade Control (Harmonized System) of classification of Export and Import Items:

(2)-----

(3)-----

- (4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder:

**Rule 48 of SEZ Rules,2006 : Procedure for Sale in Domestic Tariff Area**

(1) Domestic Tariff Area buyer shall file Bill of entry for home consumption giving therein complete description of the goods and / or services namely, make and model number and serial number and specification along with invoice and packing list with the Authorised Officers:

*Provided that the Bill of Entry for home consumption may also be filed by a Unit on the basis of authorization from a Domestic Tariff Area Buyer.*

(2) Valuation of the goods and / or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made there under as applicable to goods when imported into India:

1.6 The subject goods cleared by KXOL from SEZ Unit into DTA are subjected to levy of Customs duty under Section 30 of Special Economic Zone Act, 2005. The Bills of Entry were filed on self assessment basis for the clearance of subject goods into Domestic Tariff Area by KXOL on the basis of authorization given by the DTA buyer namely M/s R.M. Trading Co.,1454, Mahukant Complex, Nava Madhupura, Ahmedabad, Gujarat-380004, under Rule 48(1) of the Special Economic Zone Rules (SEZ Rules), 2006 .

1.7 The valuation of the said goods removed / cleared under the subject Bills of Entry filed by M/s Kitchen Xpress Overseas Limited on self-assessment basis, into Domestic Tariff Area for and on the basis of authorizations from respective DTA buyers, was done under Rule 48(2) of the Special Economic Zone Rules (SEZ Rules), 2006.



1.8 Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of entry or Shipping Bill, as the case may be. Under self-assessment, the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of the imported/ export goods while presenting Bill of Entry or Shipping Bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless otherwise specified in these Rules all inward or outward movement of goods into or from the zone by the Unit or Developer shall be based on self-declaration made by the Unit/Developer. While clearing the goods to Domestic Tariff Area, KXOL was bound for true and correct declaration and assessment. As KXOL was engaged in the business of the Pulses Grinding (Atta of Pulses) – Powder, they were fully aware of specifications, characteristics, nature and description of the goods cleared by them in domestic tariff area. However, it appears that KXOL deliberately suppressed specifications and characteristics of the goods and wrongly declared the classification of the said product / goods under tariff item 07139099 of CTA,1975 with an intention to evade the payment of Customs Duty. They were aware of the fact that the subject goods were not classifiable under CTH 0713 and therefore, not eligible for exemption under Customs Notification No.12/2012-Customs dated 17.03.2012. Though, the subject goods viz., Pulses Grinding (Atta of Pulses) – Powder were classifiable under tariff item 11061000 and at the time of clearance into DTA attracted Basic Customs Duty @ 30% + CESS @ 3% + SAD @ 4% ( total 36.136%), by suppressing the material facts of nature, specifications , characteristics and description of the subject goods, KXOL wrongly availed the benefit of exemption under Notification No.12/2012-Customs dated 17.03.2012 with an intention to evade Customs Duty totally amounting to **Rs.7,57,729/-**, as detailed in Annexure-A of the notice. In view of the foregoing facts, it is a fit case for invoking the extended period for demanding duty as provided under Section 28(4) of the Customs Act, 1962.

1.9 The said Unit and the above mentioned importer did not disclose the material facts relating to the actual specifications, characteristics, nature and description of the subject product cleared into DTA. The above discussed facts reveal that while clearing the subject goods i.e., Pulses Grinding (Atta of Pulses) – Powder to DTA on behalf of the above named importer, M/s Kitchen Xpress Overseas Limited have mis-declared the subject goods, totally valued at Rs. 20,96,880/-, as detailed in Annexure-A to the notice by deliberately suppressing the material facts relating to specifications and characteristics of the same. They mis-classified the subject goods with an intention to evade the payment of appropriate duty on the same during clearance to DTA. For the said act of suppression of material facts and mis-declaration of description, the goods mentioned in Annexure-A to the Notice, totally valued at Rs.20,96,880/-, are liable to confiscation under Section 111(m) of the Customs Act, 1962, though the same are



not physically available. For the act of suppression of material facts and mis-declaration, KXOL and above mentioned importer have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962. By the act of knowingly evading Customs duty by suppressing the material facts and mis-declaration of the subject goods, KXOL and the importer mentioned above have also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962. Since, KXOL have prepared and used invoices and packing lists showing false information about the subject goods, this act on their part have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962.

2. In view of the above discussions and facts M/s Kitchen Xpress Overseas Limited, and the Importer viz., M/s. R.M. Trading Co. were called upon to Show Cause Notice No. S/10-52/Adj./ADC/KXOL/2017 dated 04.07.2018 by the Additional Commissioner of Customs, Custom House, Kandla as to why:

- a) The classification declared as Customs Tariff Item 07139099 of Customs Tariff Act, 1975 in the Bills of Entry appearing in Annexure-A to the notice should not be rejected and the goods detailed in Annexure-A to the notice should not be classified under the Customs Tariff Item 11061000 of Customs Tariff Act, 1975 and the respective Bills of Entry be assessed accordingly;
- b) the exemption availed under Notification No.12/2012-Customs dated 17-03-2012 should not be denied to the goods detailed in the Annexure-A to the notice;
- c) the Customs duty totally amounting to Rs.7,57,729/-on the goods detailed in Annexure-A to the notice should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid;
- d) the goods mentioned in Annexure-A to the notice, totally valued at Rs.20,96,880/-, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.
- e) Penalty under Section 112(a) & 114A of the Customs Act, 1962 should not be imposed on each of them for reasons discussed above.
- f) Penalty under Section 114AA of the Customs Act, 1962 should not imposed upon M/s. KXOL for using the false and incorrect material resulting in evasion of total Customs Duty of Rs.7,57,729/-.

### DEFENCE REPLY AND PERSONAL HEARING

3. For the sake of natural justice, date of personal hearing in the matter was fixed on 20.12.2018 wherein Shri Vivek Milak, Authorized Representative, on behalf of both the noticees appeared for personal hearing on 20.12.2018 and submitted written/defence submission letter





dated 19.12.2018. During Personal Hearing Sh. Vivek Milak stated that that he has nothing more to add in this matter. The essence of the submission as made during personal hearing is elaborated as under:

3.1 The Authorised Representative of both the noticees stated that the subject Show Cause Notice is issued to them regarding clearance of pulses Grinding (Atta of Pulses) into Domestic Tariff Area (DTA) under tariff item 07139099 at NIL rate of duty by availing exemption under notification 12/2012-Cus (Sr. No. 21) and the said SCN is based on the issue raised by CRA in the Audit Report No. 29/2017-18 dated 7th July, 2017. He stated that they are importing "PULSES" and export of final product after processing viz. Sorting/Grading/Polishing are "PULSES". The non-exportable quantities cleared into domestic market from our Kandla SEZ unit are being made to classify as "PRODUCT OF MILLING INDUSTRY including MALT, STARCHES, INULIN, WHEAT GLUTEN".

3.2 That the goods cleared from the unit into DTA are duly assessed by the Appraising Officer of KASEZ and examined by the proper officer of KASEZ. Hence, there is no intention to clear the goods with false and incorrect declaration or for duty evasion. The unit is only importing the pulses and after sorting/grading through the state of art processing facility and polished based on overseas customer requirement, packed in various pack sizes based on international market requirements. During the processing/polishing the pulses are passed out through various levels of sortex; at times the pulses of off sized are either broken or churned out in the SORTEX machine making it course and into very small particles. Eventually, not being of export quality, the coarsely broken pieces of pulses are removed into domestic market at low price which are mainly for those living below poverty line who cannot afford normal/superior grade of quality pulses or in other cases for feeding cattle as pulses contain high protein content which is very beneficial for health of milk giving animals like cows, buffaloes. Accordingly, the pulses that are coarsely broken apart during the processing/polishing/grading/sorting in the sortex machine and into small pieces are classified as "**PULSES GRINDING**" which was the best suited word as per our understanding then.

3.3 He further stated that CTH 11061000 covers " ....of the dried leguminous vegetables of heading 07.13" under the broad heading Flour, Meal and Powder of the dried leguminous vegetables of heading 07.13. Also, FLOUR is defined as fine powder obtained from the milling industry. Similarly, POWDER is defined as dry particles produced by grinding / crushing of solid substances. In this case, the unit is not a milling industry but into sorting/grading and polishing with state of the art SORTEX Machines installed to carry out the process. The product classified and cleared is PULSES GRINDING which is not flour or powder but coarsely broken out pieces



generated during the processing of polishing and does not classify as flour or powder. It is the terminology used to identify the product and essentially classified as:

- OFF SPEC                      They are larger pieces of pulses but with uneven sizes or size variation; segregated from the lot during the processing.
- TUKDI/BROKEN                These are pulses split/broken pulses-broken in two more pieces during the processing.
- BHUSI/BHUKI/GRINDINGS    These are still small coarsely grinded pieces of pulses generated during the processing/polishing activity. Coarse pulses mixed with various impurities-sweepings.

Reference being as well made to the classification of any goods being imported into India and as regulated under the Customs Tariff Act 1975 as well as the guiding principles there under – “PULSES” are classified under CHAPTER 7. Whereas, CHAPTER 1106 pertains to PRODUCTS OF MILLING INDUSTRY; MALT; STARCHES; INULIN; WHEAT GLUTEN. There are the judgments pertaining to similar instance of classification issues being upheld by Hon’ble Supreme Court of India and Customs, Excise and Gold Tribunal-Delhi; for the same would very clearly and ideally clarify the matter.

COMMISSIONER OF CUSTOMS, MUMBAI V/s M.M.K. JEWELLERS & ANOTHER  
(Hon’ble Supreme Court of India)  
M/s. SHIVAJI WORKS LTD V/s COLLECTOR OF CENTRAL EXCISE  
(Customs, Excise and Gold Tribunal-Delhi)

3.4 Regarding imposition of penalty under section 112 of the Customs Act, 1962, they submitted that the show-cause notice was issued under section 28 of the Customs Act, 1962 for the purpose of recovery of duty and hence provision of section 112 cannot be invoked. It was asserted that the imported Pulses has been used for the unit for processing and export thereof and that the said section can be invoked only in case where imported Pulses has not been utilized in a manner prescribed in the said notification.

It was pointed out that section 114A is applicable only in a case where the duty has been short-levied by reason of collusion, willful misstatement or suppression of facts and since there is no such allegation, section 114A cannot be invoked.

Regarding section 111(m) of the Customs Act, 1962 the authority’s liable for confiscation, they submitted that there has been no intend for them to clear the goods with false and incorrect declaration or for duty evasion and that the goods have been duly submitted to the Kandla SEZ Customs through preventive supervision for examination always at the time of clearance from Kandla SEZ post which based on the preventive officers examination report the goods have been permitted into the Domestic Tariff Area.



3.5 Accordingly, the Authorised Representative requested to consider the request that the product classification has been true and correct as mentioned in the Bills of Entries and that neither the custom Tariff Chapter nor the Exemption Notification have specific exclusion and that very evidently the Exemption Notification covers the whole of Chapter 0713 (not specific to any product description) and hence the same para may be dropped. Further, he also request to consider the facts the products in Import-processing-Export as well as Domestic Clearance which has been passed out through the appraisals as well as physical verification of esteemed office bearers and provide them your optful justice so that they may henceforth concentrate on exports and processing instead of the fear of being penalized unjust and without any reason or wrong doing.

### DISCUSSION AND FINDINGS

4. I have carefully gone through the records of the case, the written defence reply dated 19.12.2018 from the both the noticees as well as the oral submissions made during the course of Personal Hearing and the relevant provisions of law and I find that following are main issues, which are involved in the subject Show Cause Notice and are required to be decided-

- a. Whether the goods are correctly classified under CTH 11061000 of Customs Tariff Act, 1975 instead of the CTH 07139099 of Customs Tariff Act, 1975 as declared in the Bills of Entry or not.
- b. Whether the exemption availed under Notification No.12/2012-Customs dated 17-03-2012 is correct or not.
- c. Whether the Customs duty of Rs.7,57,729/- should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid;
- d. Whether the goods valued at Rs.20,96,880/-, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, though the same are not physically available.
- e. Whether penalty under Section 112(a) & 114A of the Customs Act, 1962 should not be imposed on each of them.
- f. Whether Penalty under Section 114AA of the Customs Act, 1962 should not imposed upon M/s. KXOL for using the false and incorrect material resulting in evasion of total Customs Duty of Rs.7,57,729/-.

4.1 I find that M/s. KXOL had cleared/removed the goods into Domestic Tariff Area declaring goods as "Pulses Grinding (Atta of Pulses)" under CTH 07139099. During the test check of records of the Office of the KASEZ from the period from 2012-13 to 2016-17 by CRA Audit Team, the objection was raised that M/s. KXOL has cleared/removed the goods namely "Pulses Grinding (Atta of Pulses)" to M/s. R.M. Trading Co. They have classified the goods under CTH 07139099 and claimed exemption of duty vide Sl. No. 21 of the Notification No. 12/2012-



Customs dated 17<sup>th</sup> March, 2012. However, CRA Audit observed the issue and raised the para stating that noticee has cleared PULSES GRINDING (ATTA OF PULSES)-Powder and classified under Chapter heading 07139099 and claimed full duty exemption Sl. No. 21 of the Notification No. 12/2012-Customs dated 17<sup>th</sup> March, 2012.

The Customs Tariff Heading, 07139099 cover only "Dried leguminous vegetable, shelled, whether or not skinned or split" and Sr. No.21 of Notification 12/2012 covers only Dried leguminous vegetable (pulses), whereas Customs Tariff Heading 11061000 covers "of the dried leguminous vegetable of heading 07.13 under the broad heading Flour, Meal and Powder of dried leguminous vegetable of heading 07.13 of sago or of roots or tubers of heading 7.14 or of the products of Chapter.

From the above, it is clear that chapter head 07139099 does not cover PULSES GRINDING (ATTA OF PULSES)-Powder. I observed that chapter heading 07139090 includes various type of Pulses, Dried leguminous vegetable, shelled, whether or not skinned or split and Chapter Heading 11061000 covers all dried leguminous vegetable of heading 07.13 under the broad heading Flour, Meal and Powder of dried leguminous vegetable of heading 07.13 of sago or of roots or tubers of heading 7.14 or of the products of Chapter. The goods declared in the Bill of Entry were "PULSES GRINDING (ATTA OF PULSES)-Powder", which are correctly classifiable under CTH 11061000. As per Rule 3(a) of the General Rules for Interpretation of the Schedule, the heading which provides the most specific description shall be preferred to headings providing a more general description. The ATTA of PULSES has more specific Customs Tariff Heading under CTH 11.06 than the general heading under CTH 7.13. Hence the goods, which were declared in the Bill of Entry as "PULSES GRINDING (ATTA OF PULSES)-Powder" are correctly classifiable under CTH 11061000.

4.2 I find that the Authorized Representative in his written submission relied upon the following judgment which is produced below:

(i) Shivaji Works Ltd Vs Collector of Central Excise, Aurangabad and I find that the instant case is pertain to classification Casting machine parts/motor vehicle parts under tariff heading 7325 and not under tariff heading 84 to 87 of the Central Excise Tariff Act, 1985. In the case, there is an interpretation of applicability of Rule 2(a) of General Rules for the interpretation of the schedule. Since the impugned goods are Grinding Pulses (Atta of pulses) which is specifically classified under heading 1106 which covers all dried leguminous vegetable of heading 07.13 under the broad heading Flour, Meal and Powder of dried leguminous vegetable of heading 07.13 of sago or of roots or tubers of heading 07.14 or of the products of Chapter. Therefore, the said judgment is not squarely applicable to the facts of the present case.



(ii) Commissioner of Customs, Mumbai Vs M.M.K. Jewellers & Another (Hon'ble Supreme Court of India), I find that the instant case is pertain to maintain the wastage Account Register for the purpose of monitoring the actual manufacturing waste or loss by the Gem Jewellery Unit. Accordingly, the case law cited by them is not pertains to the present case from any angle.

4.3 I find that Noticee being a SEZ unit have imported various type of pulses for the purpose of re-export after processing as per requirement of foreign buyers. However, they have removed the goods "Grinding Atta of pulses" in domestic tariff area under tariff heading 07.13 availing benefits of Sr. no. 21 of Customs Notification no. 12/2012 dated 31.03.2012. I find that tariff heading 07.13 classified the goods viz. Dried Leguminous, shelled, whether or not skinned or split. The same tariff heading does not classify any powder and atta form of goods. I find that they have wilfully/intentionally cleared the goods in DTA by way of misclassification to evade the customs duty, therefore, the goods under question are liable for confiscation under section 111(m) of the Customs Act, 1962, in as much as, the classification in the Bills of Entry were not true and correct with an intention to evade duty of customs. Since the removed/cleared goods are not physically available for confiscation, but the said goods are liable for confiscation. I find that there is a difference between "confiscation" and "liable to confiscation". It is settled law that the goods which are liable to confiscation can be ordered for to be confiscated. Mis-classification is one of the modality to evade the Customs duty and less payment of duty. In cases where classification is not correctly stated for some purpose, that is to say not mentioning correct classification of the goods, then it would amount to violation of the conditions for import of the goods. The purpose of changing of description/classification may be for some other purpose, but it would certainly amount to illegal/ unauthorized and against the statue.

4.4 During the personal hearing on 20.12.2018 both the noticees submitted that the present show-cause notice dated 04.07.2018 relates to scrutiny of documents for the period 2012-13 to 2016-17, under the CRA Audit Report 29/2017-18 is time barred. Further I find that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and exported goods by the importer or exporter himself by filing a Bill of entry or Shipping Bill, as the case may be. Under self-assessment, the importer or exporter has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of the imported/ export goods while presenting Bill of Entry or Shipping Bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless otherwise specified in these Rules all inward or outward movement of goods into or from the zone by the Unit or Developer shall be based on self-declaration made by the Unit/Developer. While clearing the goods to Domestic Tariff Area, KXOL was bound for true and correct declaration and assessment. As KXOL was engaged in the business of importing the pulses and export of the same after due process as per foreign



buyers. They were fully aware of specifications, characteristics, nature and description of the goods cleared by them in domestic tariff area. However, I found that KXOL deliberately suppressed specifications and characteristics of the goods and wrongly declared the classification of the said product / goods under tariff item 07139099 of CTA,1975 instead of CTH 11061000 with an intention to evade the payment of Customs Duty. They were aware of the fact that the subject goods were not classifiable under CTH 07.13 and therefore, not eligible for exemption under Customs Notification No.12/2012-Customs dated 17-03-2012. From the description of the goods viz., Pulses Grinding (Atta of Pulses) – Powder, I find that these goods were correctly classifiable under tariff item 11061000. By suppressing the material facts of nature, specifications, characteristics and description of the subject goods, KXOL wrongly availed the benefit of exemption under Notification No.12/2012-Customs dated 17-03-2012 with an intention to evade Customs Duty as detailed in Annexure-A of the notice. In view of the foregoing facts, I find it is a fit case for invoking the extended period for demanding duty as provided under Section 28(4) of the Customs Act, 1962.

4.5 The SCN proposes imposition of penalty under Section 112(a) of the Customs Act, 1962 on both the Noticees. In this regard, both of them in their defence reply dated 19.12.2018 submitted that show-cause notice was issued under section 28 of the Customs Act, 1962 for the purpose of recovery of duty hence provisions of section 112 cannot be invoked. I find that Section 112(a) of the Customs Act, 1962, stipulates that any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable for confiscation under Section 111, or abets the doing or omission of such an act is liable to penalty as prescribed under the said Section. I find that the goods have already been made liable for confiscation for violation of Section 111 of the Customs Act, 1962, persons are also liable for penal action under Section 112 of the Customs Act, 1962.

4.6 I further find that the goods were imported by M/s. KXOL being a SEZ unit to re-export the same after processing and on the other hand they have removed the goods into Domestic Tariff Area to M/s R.M. Trading Co. by way of mis-classifying the goods in wrong chapter head with intension to evade the Customs duty and wrongly availed the benefit of Notification No. 12/2012 dated 17.03.2012 which is not admissible to them. I find that both the noticees have mis-led to the Department; therefore they cannot run away from the responsibility of removal of the goods by mis-classification of the goods. Section 114A provides that any penalty has been levied under section 114A, no penalty shall be levied under section 112 or section 114 of Customs Act, 1962, hence I propose to impose penalty under Section 114A of the Customs Act, 1962 on M/s. R.M Trading Co. and penalty under section 112 of the Customs Act, 1962 on M/s KXOL for violation of the provisions of Section 111(m) of the Customs Act, 1962





4.7 The SCN also proposes penalty under Section 114AA of the Customs Act, 1962 on M/s. KXOL.

**Section 114AA. Penalty for use of false and incorrect material.** –If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for purpose of this Act, shall be liable to a penalty not exceeding five times the value of goods.

I Find that M/s. KXOL have prepared the invoices and packing list and filed Bill of Entry on behalf of M/s. R.M. Trading Co. showing false information about the subject goods, this act on their part have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962. Further I observed that they have not even defended imposition of penalty under the provisions of section 114AA of the Customs Act, 1962 vide their written submission dated 19.12.2018 and in person during the personal hearing on 20.12.2018. Hence, I hold that M/s KXOL is also liable for penalty under Section 114AA of the Customs Act, 1962.

5. In view of the foregoing discussions and findings, I pass the following order-

### ORDER


- a. I reject the classification of the goods under CTH 07139099 and order to classify the goods under CTH 11061000 of Customs Tariff Act, 1975 and to assess the Bills of Entry accordingly.
- b. I denied the benefit of exemption of the Notification No. 12/2012-Customs dated 17.03.2012, which was availed by M/s R.M.Trading Co. and order to recover Customs duty of Rs.7,57,729.00 (Rupees Seven Lakh Fifty Seven Thousand Seven Hundred Twenty Nine only) from M/s R.M. Trading Co, 1454, Mahukant Complex, Nava Madhupura, Ahmedabad, Gujarat-380004 under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid;
- c. I order to confiscate the goods valued at Rs.20,96,880/-, under Section 111(m) of the Customs Act, 1962, however as the goods are not physically available, I do not impose redemption fine under Section 125 of the Customs Act, 1962.
- d. I impose penalty of Rs. 5,00,000.00 (Rupees Five Lakh only) on M/s. KXOL under Section 112(a) of the Customs Act, 1962.
- e. I impose penalty of Rs. 7,57,729.00 (Rupees Seven Lakh Fifty Seven Thousand Seven Hundred Twenty Nine only) on M/s. R.M.Trading Co. under Section 114A of the Customs Act, 1962. However, I give an option, under proviso to Section 114A, to the Noticee, to pay 25% of the amount of total penalty imposed at (e) above, subject to payment of total amount of duty confirmed at (b) above, interest confirmed at (b)



above and the amount of 25% of penalty imposed at (e) above within 30 days of receipt of this order;

- f. I impose penalty of Rs.1,00,000.00 (Rupees One Lakh only) on M/s. KXOL under Section 114AA of the Customs Act, 1962.

6. The said order is issued without prejudice to any other action that may be taken against the Noticee under the provisions of the Customs Act, 1962 and/or the Rules made there under and/or any other law for the time being in force.

  
(AJAY KUMAR)  
Additional Commissioner,  
Custom House, Kandla

F.No. S/10-52/Adj./ADC/KXOL/2017-18

Dated: 09.01.2019

To,

1. M/s Kitchen Xpress Overseas Limited,  
Plot No. 623, Shed No. 402,  
New Area, Kandla Special Economic Zone,  
Gandhidham, Kutch

2. M/s R.M. Trading Co.,  
1454, Mahukant Complex, Nava Madhupura,  
Ahmedabad, Gujarat-380004

**Copy to :-**

1. The Principal Commissioner of Customs, Kandla,
2. The Development Commissioner, KASEZ, Gandhidham.
3. The Deputy Commissioner (RRA) Customs Kandla.
4. The Assistant Commissioner (Recovery), CH, Kandla.
5. Guard File



