



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE: KANDLA,
NEW CUSTOMS BLDG, NR. BALAJI TEMPLE,
KANDLA, KUTCH, GUJARAT.
PHONE : 02836-271468-469 FAX : 271467

A	फाइल संख्या/ File No.	S/10-01/Ranger/Gr.VI/2018-191
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/03/2019-20
C	पारित कर्ता/ Passed by	Shri Ajay Kumar, Additional Commissioner
D	आदेश की दिनांक/Date of order	17.06.2019
E	जारी करने की दिनांक/Date of issue	17.06.2019
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	--
G	नोटीसी/ पार्टी/इंपोर्टर Noticee/Party/Importer	M/s. Ranger Enterprises, Room No. 2, Saibaba Niwas, Babul Pada, Don Lane, Achhole Road Nalasopara (E), Palghar - 401 209

33. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
34. 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
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़
अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad - 380 009.”

35. 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.
36. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये 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 –
- (xvii) उक्त अपील की एक प्रति और
A copy of the appeal, and
- (xviii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

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 10% भुगतान करना होगा।
An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
- Subject: - Case against M/s. Ranger Enterprises, Room No. 2, Saibaba Niwas, Babul Pada, Don Lane, Achhole Road Nalasopara (E), Palghar - 401 209 in respect of Bill of Entry No. 04.12.2018

BRIEF FACTS OF THE CASE

M/s. Ranger Enterprises, Room No. 2, Saibaba Niwas, Babul Pada, Don Lane, Achole Road Nalasopara (E), Palghar - 401 209 (here in after referred to as said importer for sake of brevity) holding IEC/PAN ABMPU2516J had presented Bill of Entry No. 9109797 dated 04.12.2018 through their Custom Broker M/s. Shivam Clearing Agency (Mumbai) Pvt. Ltd. for clearance of 29 items of various foodstuff with assessable value of Rs. 30,62,937/- imported vide Master Bill of Lading No. HLCULIV180145400000 dated 22.10.2018.

1.1 During examination, it was found that the goods, mentioned at item Sr. No. 21 and item Sr. No. 22 of the said Bill of Entry No. 9109797 dated 04.12.2018, are "Angostura Aromatic Bitters" and "John West Tuna Chunks (in Brine, in Spring Water and in Sunflower Oil)" instead of declared item of "Aromatic Sauce" and "JW Sauce" in the said Bill of Entry. The details are as under:

A. Item at Sr. No. 21 i.e. Angostura Aromatic Bitters :-

The FSSAI test report dated 22.12.2018 confirms that the said Angostura Aromatic Bitters is Alcoholic product. Further, it was also found that the said item appears to be classifiable under CTH 22089019 instead of declared CTH 21039040. Further, as per General Note 12 of Schedule 1 of ITC (HS), the Import of alcoholic beverages as classified under Chapter 22 of this Schedule shall be subject to compliance of various mandatory requirements as stipulated by various State Governments. The importer fails to provide any document showing compliance to various mandatory requirements of State Government for import of Alcoholic Beverages.

The imported goods are found to be mis-declared and therefore, the value declared by the importer, does not appear to be true transactional value of the product under Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 (as amended time to time) and hence may be rejected under Rule 12(2)(iii)(a) of Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007. The importer declared their assessable value of 25 CTNs of the instant goods as Rs. 4814.7 i.e. Rs. 16.05 per bottle of 200 ML. The efforts are made to determine the value of the imported Angostura Aromatic Bitters by using NIDB data to arrive at contemporaneous value of identical/similar products imported. However, no identical and similar goods were imported, hence the value of contemporaneous import under Rule 4 and Rule 5 may not be applicable in this case. Accordingly, efforts were made to find the retail market price in e-commerce. Amazon selling the said goods with MRP of Rs. 3499/- at an offer price of Rs. 2800/- per 200 ML bottle (as on 01.01.2019). The importer has imported 25 CTNs (1x12x200ML) and 60% on MRP was considered as reasonable to counterbalance the expenses like duty, dealership charges/commission

and margin of profit. Accordingly, the assessable value of Angostura Aromatic Bitters determined as Rs. 1400/- per 200 ML bottle and the value as determined is acceptable to the importer, as informed by him vide letter dated 14.05.2019. The importer has imported quantity of Angostura Aromatic Bitters are 300 pcs. of 200 ML bottles in 25 CTNs. Accordingly, total re-determined assessable value of the imported 300 pcs. of 200 ML Bottles of Angostura Aromatic Bitters comes to Rs. 4,20,000/- (300 Pcs x Rs. 1400).

B. Item at Sr. No. 22 i.e. John West Tuna Chunks (in Brine, in Spring Water and in Sunflower Oil)

The imported goods mentioned at Sr. No. 22 of Bill of Entry is declared as JW Sauce and classified it under CTH 21039040, however, during examination, it is found that the said importer have actually imported "John West Tuna Chunks in three flavours i.e. in Brine, in Spring Water and in Sunflower Oil", which is classifiable at CTH 16041410. The declared assessable value of 306 CTNs (1x36x145gm) of instant goods is Rs. 1,28,355.52 and during assessment the value was enhanced to Rs. 2,38,852.89, in terms of Rule 4 of the Customs Valuation Rules, 2007 and the same was accepted by the importer..

The product being live stock product as defined and included vide S.O. 1043 (E) dated 16.10.2001 and import of live stock product is regularised vide 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 S.O. 1043 (E) dated 16.10.2001, the word "Live-stock product" has been extended to cover products of all aquatic animals including fish as a live-stock product as per Live Stock Importation Act, 1898 (as amended). In the Schedule attached to the Notification S.O. 655(E) dated the 07th July, 2001, prescribes 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.*

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 S.O. 2666(E) dated 16.10.2014 from the proper authority.

Further, CBEC by its Circular No. 13 dated 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."

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."

Further, the policy condition 1 of Chapter 16 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.

1.2 In this case the cargo consisting of Alcoholic beverages (at Sr. No. 21) with assessable value Rs. 4,20,000/- and live stock products (at Sr. No. 22) with assessable value Rs. 2,38,853/- and totally valued (Assessable Value) at Rs. 6,58,853/- has been imported without valid document for import of Alcoholic beverages in compliance to requirement of State Government and without valid import permit. Thereby, the importer had 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.

1.3 The said importer vide their letter dated 03.01.2019 had requested for manual out of charge of the remaining goods as they are in the process of getting sanitary permit. Accordingly, manual out of charge was granted on 04.01.2019.

1.4 The said importer vide letter dated NIL, received on 12.04.2019 and 14.05.2019 has informed that they tried their level best efforts to get permissions from the requisite

department but they were not able to get the same. And, they also accepted the value as determined. Accordingly, they requested to allow them to re-export the said goods as the goods are on the verge of being expired. They also requested that the case may be decided by considering the fact as mentioned in their letter and the grounds of merits as they don't require Show Cause Notice or personal hearing in the matter.


PERSONAL HEARING

2. The importer vide his letter dated 14.05.2019 waived the issuance of Show Cause Notice and Personal hearing and accepted the assessable value of the goods as determined by the Department.

DISCUSSION AND FINDINGS

3. I have carefully gone through the case records & submissions made by the importer and applicable provisions of law. I find that the importer has waived the issuance of Show Cause Notice and opportunity of appearing before me during personal hearing; hence I find that the principle of natural justice has been fulfilled. I find that the importer vide letter dated 12.04.2019 and 14.05.2019 stated that items at Sr. No. 21 contains 44% of wine for which there is requirement of State permission for clearance and for item at Sr. No. 22 there is requirement of AQC and sanitary permit and as they tried their level best but they were not able to get the same.

3.1 I find that the importer has mis-declared the imported goods for item at Sr. No. 21, as Aromatic Sauce and classified under CTH 21039040, however, during examination, it is found as "Angostura Aromatic Bitters". The FSSAI report dated 22.12.2018 confirmed that the imported goods viz. Angostura Aromatic Bitters contains 44.9% Ethyl Alcohol and the imported goods are falls under "Chapter 22 - Beverages, spirits and vinegar" of Customs Tariff Act, 1975, which is classifiable at CTH 22089019. Further, in terms of General Note 12 of ITC(HS) Schedule -1, the import of alcoholic beverages as classified under Chapter 22 shall be subject to compliance of various mandatory requirement as stipulated by various state governments.

3.2 Further, I find that the imported goods are found to be mis-declared as Aromatic Sauce instead of Angostura Aromatic Bitters, the value declared by the importer is not true transaction value of the products under Section 14 of the Customs Act, 1962 read with Customs Valuation Rules, 2007 and therefore requires to be rejected under Rule 12(2)(iii)(a) *ibid*. As the contemporaneous value of identical/similar goods imported is not available under Rule 4 and 5 *ibid*, the value is to be determined under Rule 7 of the Customs Valuation Rules, 2007. I find Amazon was selling the said goods with MRP of Rs. 3499/- at an offer price of Rs. 2800/- per 200 ML bottle. The importer has imported 25 CTNs (1x12x200ML) and 60% on MRP was considered as reasonable to counterbalance the expenses like duty, dealership charges/commission and margin of profit. Accordingly, the assessable value of Angostura Aromatic Bitters determined to 

Rs. 1400/- per 200 ML bottle and the value as determined is acceptable to the importer, as informed by him vide letter dated 14.05.2019. The importer has imported 300 pcs of 200 ML bottles of Angostura Aromatic Bitters, hence, the re-determined assessable value of 300 pcs. of 200 ML bottles of Angostura Aromatic Bitters arrived at Rs. 4,20,000/-.

3.3 I find that the importer has mis-declared the imported goods for item at Sr. No. 22, as "J/W Sauce" however, during examination, it is found as "John West Tuna Chunks in three flavours i.e. in Brine, in Spring Water and in Sunflower Oil" which are classifiable under "Chapter 16 - Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates" as per Customs Tariff Act, 1975. And, therefore the goods are classifiable under CTH 16041410 instead of CTH 21039040. Further, I find that contemporaneous import of identical goods under Rule 4 of the Customs valuation Rules, 2007 are available and therefore the transaction value under Rule 4 *ibid* for 306 CTNs (1x36x145gm) of instant goods of John West Tuna Chunks is re-determined as Rs. 2,38,853/-.

3.3.1 Further, that the import of live stock and live stock products is regularised vide 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.

3.3.2 In the said Notification the word Live-stock product has been defined and accordingly Fish and Fish products are termed as a live-stock product. In the Schedule attached to the Notification S.O. 655(E) dated the 07th July, 2001, prescribes 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)* and It is further clarified in para (4) of the said 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*".

3.3.3 Further, The policy condition 1 of Ch. 16 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 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.

3.4 In the instant case, the importer has imported the goods, as mentioned above, without compliance of various mandatory requirements as stipulated by various state governments and without sanitary import permit. 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.

3.5 I find that the said importer vide their letter dated 12.04.2019 and 14.05.2019 has informed that they tried their level best to get permission but they are not able to get the same from concerned department.

3.6 I find that the said importer had imported alcoholic goods (item No. 21) without compliance to various state government requirement and hence violated condition 1 of chapter 22 of ITC(HS) Schedule-1 and further they had imported live stock products (item No. 22) through a port where AQC station is not stationed thereby they violated the provisions of S.O. 2666(E) dated 16.10.2014 and accordingly, they made the goods liable for 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

- (i) I reject the classification of the imported goods at item Sr. No. 21 of Bill of Entry No. 9109797 dated 04.12.2019 declared as Aromatic Sauce under tariff item 21039040 of the Customs Tariff Act, 1975 filed by M/s. Ranger Enterprises, Palghar and order to re-classify the imported goods at CTH 22089019 of the Customs Tariff Act, 1975, being Angostura Aromatic Bitters.
- (ii) I reject classification of the imported goods at item Sr. No. 22 of Bill of Entry No. 9109797 dated 04.12.2019 declared as JW Sauce under tariff item 21039040 of the Customs Tariff Act, 1975 filed by M/s. Ranger Enterprises, Palghar and order to re-classify the imported goods as CTH 16041410 of the Customs Tariff Act, 1975, being John West Tuna Chunks.
- (iii) I reject the declared assessable value of Rs. 16.05 per 200 ML Bottle of imported goods at item Sr. No. 21 declared as Aromatic Sauce under Rule 12(2)(iii)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the assessable value as Rs. 1400/- per 200 ML Bottle of Angostura Aromatic Bitters under Rule 7 of the Customs Valuation Rules, 2007, as discussed above.
- (iv) I reject the declared assessable value of Rs. 1,28,355.52 for 306 CTNs (1x36x145gm) of instant goods under Rule 12(2)(iii)(b) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and

order to re-determine the assessable value Rs. 2,38,852.89, in terms of Rule 4 of the Customs Valuation Rules, 2007, as discussed above.

- (v) I order for confiscation of offending goods at Sr. No. 21 and 22 covered under Bill of Entry No. No. 9109797 dated 04.12.2018 valued at Rs. 4,20,000/- and Rs. 2,38,853/- respectively under Section 111 (d) and 111(m) of the Custom Act, 1962. However, I give an option to re-export the above said goods on payment of Redemption Fine of Rs. 2,00,000.00 (Rupees Two Lakh only) under Section 125 of the Customs Act, 1962.
- (vi) I also impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) on the importer M/s. Ranger Enterprises under Section 112(a) of Customs Act, 1962.
- (vii) I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

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

Date : 17.06.2019

F.No. : S/10-01/Ranger/G.VI/18-19

To,

M/s. Ranger Enterprises,
Room No. 2, Saibaba Niwas,
Babul Pada, Don Lane,
Achole Road Nalasopara (E),
Palghar - 401 209

Copy to:

1. The Pr. Commissioner of Customs, Kandla.
2. The Dy./Asstt. Commissioner (TRC), Custom House, Kandla.
3. The Dy./Asstt. Commissioner (RRA), Custom House Kandla.
4. Guard file.