

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	फा./सं. FILE NO.	F. No. GEN/ADJ/ADC/1183/2024-Adjn-
B	मूल आदेश संख्या/ ORDER-IN-ORIGINAL NO.	MCH/ADC/AKM/357/2024-25
C	द्वारा पारित किया गया/ PASSED BY	अमित कुमार मिश्रा अपर आयुक्त सीमा शुल्क सीमा शुल्क भवन, मुन्द्रा
D	आदेश की तिथि DATE OF ORDER	28.03.2025
E	जारी करने की तिथि DATE OF ISSUE	28.03.2025
F	कारण बताओ नोटिस संख्या & तिथि SCN NUMBER & DATE	CUS/APR/BE/MISC/897/2024-Gr 1 dated 10.04.2024
G	आयातक / नोटिस प्राप्तकर्ता ImPORTER / NOTICEE	1) M/s. Choudhary Fruit Co. (IEC No. ABMPH0072Q) 2) M/s. Sharon Enterprises 3) M/s. Service Bureau Logistics LLP
H	डिन संख्या /DIN NUMBER	20250371MO000000FDD9

1. यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 12 8 A 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 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्क आयुक्त) अपील(,

चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,

नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,

NAVRANGPURA, 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 be 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.

अपील .6 प्रस्तुत करते समय, सीमाशुल्क) अपील (नियम, 1982 और सीमाशुल्क 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, Commissioner (A) के समक्ष मांग शुल्क का 7.5 % भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) 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 FACTS OF THE CASE

Name of the Importer	M/s Choudhary Fruit Co.
Address of the Importer	Shop No. 30, Floor 2 nd Block, C Landmark in Azadpur Mandi, New Delhi
IEC No.	ABMPH0072Q
Name of 2 nd CB (CB Code)	M/s Service Bureau Logistics LLP (ACMFS4298LCH001)
Name of 1 st CB (CB Code)	M/s Sharon Enterprises
Bill of Lading No. & Date	ACL/JEA/MUN-4414/22 Dated. 15.06.2022
Bill of Entry No. & Date	9195475 dated. 20.06.2022
Description of Goods	'Kiwi Chile' CTH - 08105000
Container No.	ACLU9261004, ALLU6978520 & HDMU5491336

Whereas M/s. Choudhary Fruit Co. (IEC- ABMPH0072Q), Shop No.30, Floor 2nd Block, C Landmark in Azadpur Mandi, New Delhi (hereinafter referred as the 'Importer'), filed Bill of Entry No. 9195475 dated 20.06.2022 (hereinafter

referred as 'BE') by Custom Broker M/s Sharon Enterprises (hereinafter referred as 'CB1') later on the CB was amended to M/s Service Bureau Logistics LLP (hereinafter referred as 'CB2') for importation of goods, declared as 'Kiwi Chile' and 'Fresh Kiwi' (hereinafter referred as 'kiwi') falling under CTH 08105000. The imported goods had arrived per Bill of Lading No. ACL/JEA/MUN-4414/22 dated.15.06.2022 from UAE. The details of BE is as under:

BE No. & Date	Description of Goods & CTH declared	Container No. (s)	Qty (Kgs)	Declared Asses. Value (Rs.)	Declared Duty Payable (Rs.)
BE No. 9195475 dated. 20.06.2022	Kiwi Chile Fresh Kiwi (BL) CTH- 08105000	ACLU9261004 ALLU6978520 HDMU5491336	69825	32,26,650/-	10,64,795/-

2. Issue in Brief:-

Whereas an alert was received from NCTC dated 23.06.2022 stating that the goods could potentially be of Iran origin. As the import of 'Kiwi' from Iran was prohibited in India since December 2021, this consignment appears to have been mis-declared as Chile origin.

3. Investigation:-

3.1. Whereas import of Iran origin Kiwi is prohibited in India from December 2021 by the nodal body National Plant Protection Organization (NPPO) under the Agriculture Ministry as per No.18-23/2015-PP.II (e-16587) dated 07.12.2021.

3.2 The said BE was put on hold for examination by SIIB and examination of the goods was carried out in TG Terminals Private Limited CFS in presence of Shri Rakesh Bhanushali, authorized representative of M/s Choudhary Fruits Co. and CFS representative vide Examination Report dated 18.07.2022. The goods mentioned in the BE were covered under 3 refrigerated containers bearing container number ACLU9261004, ALLU6978520 and HDMU5491336. The subject goods were de-stuffed from the containers near exit gate of TG Terminals Private Limited CFS. The goods were found packed in plastic bags and placed in plastic crates which were placed one over another. The goods were found to be Kiwi.

3.3 In order to ascertain the Country of Origin of the subject goods, container line M/s Winwin Maritime Limited, Gandhidham, Gujarat, was requested to provide load port documents from Chile to Mundra and detailed container movement in respect of containers corresponding to Bill of Lading No. ACL/JEA/MUN-4414/22 dated 15.06.2022. In response, M/s Winwin Maritime Limited container provided the movement details of the containers vide email dated. 04.08.2022, but the said documents did not have any proof that the said containers/goods were loaded from Chile.

3.4 During the course of investigation, it was noticed that containers containing kiwi which arrived from Chile to UAE and containers containing the subject goods loaded from UAE to India were different. Further, it is also noticed that Phytosanitary Certificate No. 2067391, 2006063 & 1980993 mentioned in Phytosanitary Certificate for re-export DXB- APH-02415-2001307 dated 17.06.2022 issued by the United Arab Emirates Ministry of Climate Change & Environment authority was different from the Phytosanitary

Certificate No. 2171104, 2166630, 2158829 & 2171102 issued by the Chile authority. The details are as under –

TABLE-A

Description	Chile to UAE				UAE to India
Bill of Lading No. & Date	MEDUD2564471 dated 17.05.2022	MEDUD2602297 dated 11.05.2022	MEDUD2490339 dated 06.05.2022	Not provided	ACL/JEA/MUN 4414/22 dated 15.06.2022
Vessel/Voyage	Cape Akritas	MSC Rayshmi	Cape Tainaro		TSS Shams
Port of Lading	Valparaiso, Chile	Valparaiso, Chile	Valparaiso, Chile		Mundra, India
Port of Discharge	Jebel Ali, UAE	Jebel Ali, UAE	Jebel Ali, UAE		Mundra, India
Name and Address of Shipper	M/s. Sociedad Exportadora verfrut S.P.A, Parcela 5 Santa Ines, Las Cabras, Chile	M/s. Sociedad Exportadora verfrut S.P.A, Parcela 5 Santa Ines, Las Cabras, Chile	M/s Exportadora Subsole S.A. AV Luis Vitacura, Pasteur5655, Santiago, Chile on behalf of Novafruit SRL, Milano-Italy		M/s Anchor Global Foodstuff Trading LLC, PO Box 999, UAE
Name and Address of Consignee	M/s Anchor Global Foodstuff Trading LLC, PO Dubai-Box 999, Dubai UAE	M/s Anchor Global Foodstuff Trading LLC, PO Dubai-Box 999, Dubai UAE	M/s Anchor Global Foodstuff Trading LLC, PO Dubai-Box 999, Dubai UAE	M/s Anchor Global Foodstuff Trading LLC, PO Dubai-Box 999, Dubai UAE	M/s Choudhary Fruits Co, Shop Delhi-110033
Container No.	TRIU8915640	SEGU9202249	SEGU9673573	TRIU8272348	HDMU549133, ALLU6978520, ACLU9261004
Phytosanitary Certificate	2171104 issued by Chile	2166630 issued by Chile	2158829 issued by Chile	2171102 issued by Chile	DXB-APH-02415-2001307 dated 17.06.2022 (wherein PC No. 2067391, 2006063, 1980993)
Quantity	2400 Boxes	2400 Boxes	1080 Boxes	2400 Boxes	7350 Boxes (Each container-2450 Boxes)

3.5 In order to ascertain the importer's claim, summons dated 05.08.2022 & 16.08.2022 were issued to the importer to provide relevant documents providing proof that the goods arrived from Chile and to tender statement. The importer has not appeared for statement. However, submitted letter dated 25.08.2022, that due to their financial issues, they are unable to clear their consignment and requested for some time.

3.6 Summons dated 16.08.2022 was issued to CB2 firm M/s Service Bureau Logistics LLP to provide relevant import documents and to tender statement. However, CB2 firm neither provided documents nor appeared for tendering statement at that time.

3.7 Whereas, after passing of one week from importer's letter dated 25.08.2022, no one appeared for clearance of the imported goods from importer, another Summons dated 02.09.2022 & 13.03.2023 were issued to the importer to provide relevant documents and tendering statement. However, importer neither provided documents nor appeared for tendering statement.

3.8 The Plant Quarantine Station, Mundra was requested through email dated 03.10.2022 for inspection of the container containing the consignment imported vide BE No.9195475 dated 20.06.2022. Plant Quarantine Station,

Mundra vide email dated.04.10.2022 commented that cargo is infested with fungal infection (Blue mold) in rotten condition which is recommended for destruction, as the cargo had already perished and no one approached for clarifying the origin and clearance of the same, the same was placed under seizure on 18.10.2022 under Section 110(1A) & 110(1B) of the Customs Act, 1962 liable for confiscation under Section 111(d) of the Customs Act, 1962. The disposal section vide letter dated 19.10.2022 was requested to initiate the disposal proceedings as Plant Quarantine Station, Mundra had suggested for destruction of the cargo after their inspection of the cargo.

3.9 The importer vide letter dated 14.02.2023, submitted that their financial condition is not stable and as regards the residual life of the cargo is not good, they hereby relinquish the title on their goods under Section 23 of the Customs Act, 1962.

3.10 Whereas Summons dated 02.03.2023 & 06.03.2023 were issued to CB2 firm M/s Service Bureau Logistics LLP, Gandhidham to submit documents pertaining to the said goods imported under BE No.9195475 dated 20.06.2022 and KYC documents of importer, verification report and tender Statement. In response of the summons, they submitted vide their letter dated 13.03.2023 & 20.07.2023 that they are ready to give statement and they are trying to bring the importer to Customs office and requested for some time and further they submitted that they are trying to chase importer from past few months and not getting any connection to be in touch with provided details. However, CB2 firm M/s Service Bureau Logistics LLP, Gandhidham has neither provided KYC documents Verification Report nor appeared for statement. In view of the same, it appears that the CB2 firm M/s Service Bureau Logistics LLP, Gandhidham has failed to co-operate with the Customs Authorities and not produced documents which was sought by the Customs Authorities.

4. Summons on dated 10.01.2024 was issued to M/s Service Bureau Logistics LLP, Gandhidham and statement of Shri Mahato Anshu Krishna Prasad, "H" card of CB firm M/s Service Bureau Logistics LLP, Gandhidham was recorded on dated 16.01.2024 wherein he interalia stated that :-

- He had received hardcopy of Import documents from Rakesh Bhanushali. The Bill of Entry No. 9195475/20.06.2022 was filed by the CB M/s Sharon Enterprises, imp@sharonent.com, they refused to clear, and they submitted letter dtd.24.06.2022 informing SIIB Section Custom House Mundra the same and they further returned back the Import Documents to Shri Hanif M/s. Choudhary Fruit Co, New Delhi CUS/APR/BE/MISC/897/2024-Gr 1-O/o Pr Commr-Cus-Mundra I/1893758/2024 (9911004432). Shri Hanif handed over the import documents to Shri Rakesh Bhanushali and the CB was amended from M/s.Sharon Enterprises to M/s. Service Bureau Logistics LLP. Later on the SIIB Custom House Mundra put on hold the consignment and examined on 18.07.2022.
- On being asked to explain about the said consignment are covered under three 40 ft. reefer containers HDMU5491336, ALLU6978520, ACLU9261004 which in total consisted of 7350 boxes of Kiwi which came from Jebel Ali, UAE, however there were four bills of Lading of the Kiwi arrived from Chile to UAE wherein the container No.TRIU8272348 was left out, he stated that he did not have the Bill of Lading for the container No.TRIU8272348.
- On being asked whether he can verify that the phytosanitary certificate issued by Chile i.e. 2171104, 2166630 and 2158829 which were to be used for the said shipment of B/E No.9195475/20.06.2022, have not been used ever or whether these phytosanitary certificate were used

clearance of some other shipment he stated he did not know whether phytosanitary certificate 2171102, 2171104, 2166630 and 2158829 have been used for any other consignment.

- On being shown and asked that UAE Ministry of Climate Change & Environment Phytosanitary Certificate for Re-export No. DXB-APH-02415-2001307 dtd. 17.06.2022 wherein the number of packages have been mentioned as 7350 and containers mentioned as HDMU5491336, ALLU6978520, ACLU9261004 however the Phytosanitary mentioned are PC No.2067391, 2006063, 1980993, please clarify why phytosanitary certificate provided in the B/E i.e. 2171104, 2166630 and 2158829 are different then copy provided he stated he did not knew.

5. Summons dated 07.02.2024 was issued to M/s Sharon Enterprises and statement of Shri Jiten Thakker, G card No.CHM/G-03/2021-22 of, 704-705, Filix 7th Floor, LBS Marg, Opp. Asian Paint, Bhandup(W), Mumbai-78 having another office at Mundra Office No.M-12, First Floor, Kashish Arcade, Opp. Centre Palace, Mundra Port Road, Zero Point Mundra 370421 recorded on 12.02.2024 wherein he interalia stated that :-

- They had submitted the documents received for filing of Bill of Entry from forwarder M/s Sash Global Logistics Pvt. Ltd, and later finding import documents inappropriate they refused the further clearance/ processing of the documents, hence the Importer issued letters stating for withdrawal of import documents from M/s. Sharon Enterprises.
- They had received related documents of imports for filing of bill of entry after negotiation with the forwarder M/s. Sash Global Logistics Pvt. Ltd., while going through these documents they had found some discrepancy in the phytosanitary certificate, hence the Importer M/s. Choudhary Fruit Co, New Delhi had filed the letter dated. 23.06.2022 to the Customs Authorities and also to them, thereafter they had handed over the documents on 24.06.2022.
- On being asked he stated that on scrutiny of the documents they found that the phytosanitary certificate issued by the UAE authorities did not tally with the Phytosanitary certificate issued by Chile authorities, when asked about it the Importer could not give satisfactory reply, so they decided not to go further doing clearance of the consignment of Bill of Entry No.9195475/20.06.2022 imported vide Bill of Lading No. ACLJEAMUN441422 dtd.16.06.2022.
- On being shown the phytosanitary certificate 2171102, 2171104, 2166630 and 2158829 issued by Chile and phytosanitary certificate for re-export No.DXB-APH-02415-2001307 verification code -204-5854 issued by United Arab Emirates, Ministry of Climate Change and Environment, and further asked to elaborate he stated that as per details available B/E No.9195475/20.06.2022 were covered under ACL/JEA/MUN-4414/22 dated 15.06.2022 which covered three 40 ft. reefer containers HDMU5491336, ALLU6978520, ACLU9261004 which in total consisted of 7350 boxes of Kiwi which came from Jebel Ali, UAE, however there are four bills of Lading of the Kiwi arrived from Chile which are as follows:-

Description	Chile to UAE			
Bill of Lading No. & Date	MEDUD2564471 dated. 17.05.2022	MEDUD2602297 dated. 11.05.2022	MEDUD2490339 dated. 06.05.2022	
Container No.	TRIU8915640	SEGU9202249	SEGU9673573	TRIU8272348
Phytosanitary Certificate	2171104	2166630	2158829	2171102

issued by Chile Authority				
Quantity	2400 Boxes	2400 Boxes	1080 Boxes	2400 Boxes

As the phytosanitary certificate No.2067391, 2006063, 1980993 were not the phytosanitary certificate submitted by them, they presumed something was wrong and they had refused further clearance of the goods.

6.1 In the instant case, it appears that the imported goods under BE No.9195475 dated 20.06.2022 were originated from Iran and the goods were imported declaring them as Chile origin. The said imported goods were seized under Section 110 of the Customs Act, 1962 and the same are liable for confiscation under Section 111(d) of the Customs Act, 1962.

6.2 It is noticed that importer and CB2 firm have not provided any specific documents in respect of Country of Origin which can prove that the imported goods were Chile origin. Further, they had failed to appear before the Customs authorities on repeated Summons. In view of the above, it appears that the importer knew the facts regarding country of origin and relinquished the title of imported goods.

6.3 The cargo was perishable in nature, the officers of Plant Quarantine Station, Mundra inspected the said cargo and found that cargo was infested with fungal infection (Blue mold) in rotten condition and recommended for destruction and so the Disposal Section, Customs House, Mundra was requested to initiate the disposal proceedings.

7. Relevant Provisions of law:

The relevant provisions of law pertaining to the present matter are summarized as under:-

7.1. Section 2(33) defined the terms "Prohibited Goods":

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

7.2. Section 46 : Entry of goods on importation :

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a BE shall ensure the following :

- a. accuracy and completeness of the information given therein;*
- b. the authenticity and validity of any document supporting it;*
- c. compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.*

7.3 Section 110. Seizure of goods, documents and things –

(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

.....

[(1A) The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.]

(1B) Where any goods, being goods specified under sub-section (1A), have been seized by a proper officer under sub-section (1), he shall prepare an inventory of such goods containing such details relating to their description, quality, quantity, mark, numbers, country of origin and other particulars as the proper officer may consider relevant to the identity of the goods in any proceedings under this Act and shall make an application to a Magistrate for the purpose of –

- (a) certifying the correctness of the inventory so prepared; or
- (b) taking, in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true; or
- (c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

7.4 Section 111 : Confiscation of improperly imported goods, etc. - *The following goods brought from a place outside India shall be liable for 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;*
 - (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.*

...

7.5 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

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

(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;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater; (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty 219 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 220 [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

7.6 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 the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

7.7 Section 117 : Penalties for contravention, etc., not expressly mentioned. – Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

Custom Broker Licensing Regulations, 2018

10 (n) verify correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;

10 (q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

8. Contravention of Provisions:

8.1. Section 46(4) of the Customs Act, 1962, stipulates that the importer, while presenting a BE shall make and subscribe to a declaration as to the truth of the contents of such BE. Further, Section 46(4A) stipulates that the importer who presents a BE shall ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with restriction or prohibition, if any, relating to the goods under this act or under any other law for the time being in force.

8.2. The said imported goods appeared to be of Iranian Origin, However, the goods were declared by the importer as Chile Origin, declaration made by the Importer appears to be incorrect and thereby they have contravened the provisions of Section 46 of the Customs Act, 1962.

8.3 From the above discussed facts and statutory provisions, it appears that the imported goods were Iranian origin and same were prohibited in India from December 2021 by the nodal body National Plant Protection organization (NPPO) under the Agriculture Ministry as per No.18-23/2015-PP.II (e-16587) dated 07.12.2021. Therefore, the imported goods appear to be liable for confiscation under Section 111 (d) & 111(m) of the Customs Act, 1962 and required to be seized under Section 110 of the Customs Act, 1962. Therefore, the goods were seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 18.10.2022.

8.4 In the present matter, the Importer was well aware of the facts that the goods stuffed in the said containers were originated from Iran. Hence, it appears that the Importer knowingly and intentionally made incorrect declaration for the COO of the goods with a wilful intention to import prohibited goods from Iran to India. Therefore, the Importer rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 for false and incorrect material on the importation of Chile originated goods.

8.5 The seized goods are liable to confiscation under Section 111 (d) & 111(m) of the Customs Act, 1962 thereby the importer rendering themselves liable for penalty under Section 112 of the Customs Act, 1962.

8.6. Further, it appears that CB1 firm M/s Sharon Enterprises has not exercised due diligence at the time of filling. However, further they refused to do clearance due to non-availability of sufficient proof of origin of documents. Therefore, M/s Sharon Enterprises rendered themselves liable for penalty under Section 117 of the Customs Act, 1962.

8.7. It further appears that CB2 firm M/s Service Bureau Logistics LLP was well aware that the goods not pertained to Chile origin as they knew it when import documents were given to them by the representative of the Importer that the earlier CB1 refused to do clearance due to non-availability of sufficient proof of origin of documents, as the documents were false and inaccurate they still took the work for clearance of the goods. Therefore, M/s Service Bureau Logistics LLP rendered themselves liable for penalty under Section 114AA & Section 117 of the Customs Act, 1962.

9.1. In view of the above, M/s. Choudhary Fruit Co. (IEC- ABMPH0072Q), Shop No.30, Floor 2nd Block, C Landmark in Azadpur Mandi, New Delhi-110033, were called upon to show cause to the Additional Commissioner of Customs (Import), Customs House, Mundra having his office situated at 1st Floor, Custom House, Port User Building, Mundra, within thirty days from the receipt of the **Show Cause Notice dated. 10.04.2024** issued vide F.No. CUS/APR/BE/MISC/897/2024-O/o Pr Commr-Cus-Mundra as to why :-

- i. 69825 Kgs of "Kiwi Chile" imported in Containers No. ACLU9261004, ALLU6978520 & HDMU5491336 covered under Bill of Lading No.ACL/JEA/MUN-4414/22 dated 15.06.2022 pertaining to BE No.9195475 dated 20.06.2022 valued at Rs.32,26,650/- (Rupees Thirty Two Lakhs Twenty Six Thousand Six Hundred and Fifty Only) should not be confiscated under Section 111 (d & 111 (m) of the Customs Act, 1962;
- ii. Penalty should not be imposed upon them under the provisions of Section 112 of the Customs Act, 1962;
- iii. Penalty should not be imposed upon them under the provisions of Section 114AA of the Customs Act, 1962.

9.2. Further, **M/s. Service Bureau Logistics LLP**, Plot No.36, Ward No.9AH, Subhas Nagar, Gandhidham, Kutch-370421 were called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra having his office situated at 1st Floor, Custom House, Port User Building, Mundra, within thirty days from the receipt of the **Show Cause Notice dated. 10.04.2024** issued vide F.No. CUS/APR/BE/MISC/897/2024-O/o Pr Commr-Cus-Mundra as to why :

- i. penalty should not be imposed upon them under Section 114AA and Section 117 of the Customs Act, 1962.

9.3. Further, **M/s. Sharon Enterprises**, Office No.M-12, First Floor, Kashish Arcade, Opp. Centre Palace, Mundra Port Road, Zero Point, Mundra-370421 are hereby called upon to show cause to the Additional Commissioner of Customs, Customs House, Mundra having his office situated at 1st Floor, Custom House, Port User Building, Mundra, within thirty days from the receipt of this notice as to why :

- i. penalty should not be imposed upon them under Section 117 of the Customs Act, 1962.

10. Personal Hearing

Personal hearing in this case was given on 09.12.2024, 07.01.2025 and 10.03.2025. In response to which Sh. Manoj Lakhani, Advocate represented Noticee no. 03 **M/s Sharon Enterprises**, and appeared for PH on 07.01.2025. He stated that although the BE was initially filed by M/s Sharon Enterprises but the Importer took away the job from and gave it to some other firm. He further stated to submit his written submission within a week. Subsequently, M/s Sharon Enterprises, produced a written submission **dated. 12.12.2024**.

Further, Sh. Vikas Singh, 'F' Card Holder of **M/s Service Bureau Logistics LLP**, the Noticee No. 02, appeared for the P.H on 07.01.2025. He stated that his firms had done the KYC verification of the Importer M/s Chaudhary Fruit Co. He also stated that they are in no position to differentiate between the Kiwi importer from Chile or Iran. He further stated to submit his written submission within a week. Subsequently, M/s Service Bureau Logistics LLP, submitted a written submission dated. **08.01.2025**.

Three opportunities of personal hearing on **09.12.2024, 07.01.2025 and 10.03.2025** as per the provisions of Section 122A of the Customs Act, 1962 were given. However, the Importer **M/s Choudhary Fruit Co. (IEC-ABMPH0072Q)**, did not attend the P.H on any of date and time given in the PHs. Hence, in the principle of natural justice, mandatory requirements of giving personal hearing have been complied with.

11. Defence Submission

11.1 Written Submission dated. 08.01.2025 of **M/s Service Bureau Logistics LLP** is re-produced hereunder :-

- That on 22.06.2022, they (M/s Service Bureau Logistics LLP) received the Bill of Entry No. 9195475 dated. 20.06.2022, from representative of Importer Mr. Ashish Ganveer and Mr. Akshay alongwith the 01st Customs Broker M/s Sharon Enterprises to custom clear the consignment covered under the said Bill of Entry No. 9195475 dated. 20.06.2024 of Importer from Delhi M/s Chaudhary Fruit Co. Shop No. 30, Floor 2nd Block C Landmark in Azadpur Mandi, New Delhi having IEC No ABMPH0072Q, alongwith the supporting documents.
- That on the same day after acceptance of the same by them, the 1st Customs Broker M/s Sharon Enterprises alongwith representative of Importer got the name of Custom Broker changed from M/s Sharon Enterprises to their Customs Broker named M/s Service Bureau Logistics LLP.
- That on being asked by M/s Service Bureau Logistics LLP from M/s Sharon Enterprises that as to why they were not willing to Custom Clearance of the same consignment on there on CB License, M/s Sharon Enterprises replied since the cargo is perishable and they had shortage of Manpower so in the interest of his further business they had asked the importer to get the consignment cleared from M/s Service Bureau Logistics LLP.
- That after receiving the complete set of documents along with KYC of Importer, they verified the authenticity of Importer by verifying the genuineness of KYC submitted they did the same through government website like GST Portal, DGFT Portal also verified the phone number and

address of the Importer from website, which was found to be correct as per the Indian Evidence Act, 1872.

- M/s Service Bureau Logistics LLP further added that they physically verified the address of Importer and found to be correct and as mentioned in IEC. Like other Fruit wholesaler Mr. Haneef was also having a place for fruit stock, a board in name of Choudhary Fruit Co. Prop. Mohd. Haneef.
- That the SIIB put the consignment on Hold and got the Highly Perishable of Kiwi Fruit consignment Examined after 28 days of Hold in the presence of Importer, Custom Broker and CFS representative, the goods were found to be as declared.
- That the SIIB was investigating the Country of Origin of Goods, whether it was from the Country (Chile- freely Importable) or (Iran-Prohibited), like them (M/s Service Bureau Logistics LLP) after physically seeing the fruit SIIB was also unable to verify the same, they totally depending on documents on record and in further want of documents from Importer. It may be noted that packaging doesn't appear to be of Iran Origin.
- That the Consignment was routed from Chile to Dubai and further to India, but the SIIB Department was focusing on the Change of Container from Dubai, which is but natural for change of Container after change of Shipping Line, and also change of Phytosanitary Certificate issued by the Agriculture Ministry of Exporting Country from Port of Loading (ie; UAE).
- That Phytosanitary Certificate issued by UAE was stating that Country of Origin as Chile as declared.
- That the Investigation Process of SIIB was taking too long for Perishable Cargo to Survive, in absence of proper refrigeration at the CFS.
- That Examination by Plant Quarantine Department of India 3/10/2022 found the goods to be not fit for human Consumption as it was rotten, it might be noticed that no comments what so ever was given by Plant Quarantine Department, Ministry of Agriculture, Government of India regarding Country of Origin of Goods, whereas they (Plant Quarantine Deptment, India) were the most competent Authority to ascertain the same.
- That importer on vide his letter 25/08/2022, after knowing the condition of his perishable Cargo gave up the Clearance of Goods as shelf life of Kiwi Detroit for further sale in open Market, also Margin of Profit was already overtaken by CFS and Shipping line charges.
- That in the initial investigation period and during Examination by SIIB Mundra Importer and M/s Service Bureau Logistics's representative was duly present.
- That further seeing lingering time for Custom Clearance Importer gave up hope, and even after many telephonic Calls from M/s Service Bureau Logistics LLP to the Importer and SIIB officers and Summons from SIIB, the Importer showed no interest in co-operation in Investigation.
- That it is wrong to state that they, M/s Service Bureau Logistics LLP, did not appear after summon, they had appeared every time summon was issued to them, but no statement was taken from them in the matter, but they were always directed to bring the Importer before SIIB Mundra.
- Since they had no power to force the importer to appear before SIIB Mundra, thus adjudication proceedings have been initiated against them.

11.2 Written Submission dated. 12.12.2024 of **M/s Sharon Enterprises** is reproduced hereunder :-

- They, (the notice **M/s Sharon Enterprises**) are a registered Customs Broker (CB NO.KDL/CB/02/2017) having a very clean record. They have never

been involved in any offence of any kind under the Customs Act in the past and they have been in the business of Custom House Clearing Agent for nearly 8 years without any blemish.

- They submitted that the SCN, the contentions raised therein and the action proposed by the notice are unsustainable in law and on facts as explained in their written submission dated. 12.12.2024.
- The present issue relates to the Bill of Entry No. 9195475 dated 20.05.2022 [Bill of Lading No. ACL/JEA/MUN-4414/22 dated 15.06.2022] of the importer Mis Choudhary Fruit Co. (IEC- ABMPH0072Q), Shop No.30, Floor 2nd Block, C Landmark in Azadpur Mandi, New Delhi filed by Custom Broker M/s Service Bureau Logistics LLP for importation of goods, declared as 'Kiwi Chile' and 'Fresh Kiwi falling under CTH 08105000 arrived from UAE under three containers.
- It appears from the impugned SCN, that the contention of the Department is that the said consignment is of Iran Origin and the import of Iran origin Kiwi is prohibited in India from December 2021 by the nodal body National Plant Protection Organization (NPPO) under the Agriculture Ministry as per No. 18-23/2015-PP. II (e-16587) dated 07.12.2021. In this connection as stated in para 5 of the SCN, a summon dated 07.02,2024 was served on M/s Sharon Enterprises (the 'noticee') and the representative of the noticee viz. Shri Jiten Thakker, holder of G Card No. CHM/G-03/2021-22, gave a statement to the department on 12.02.2024 wherein he inter alia deposed as below :-
 - i) *The notice, M/s Sharon Enterprises had submitted the documents received from forwarder M/s, Sash Global Logistics Pvt. Ltd, for filing of the said Bill of Entry. However, later noticee found import documents inappropriate and therefore they refused the further clearance/ processing of the documents. Hence the Importer issued letters to the noticee and to the department stating for withdrawal of import documents from the noticee M/s. Sharon Enterprises.*
 - ii) *M/s Sharon Enterprises had received those documents of imports for filing of bill of entry after negotiation with the forwarder M/s. Sash Global Logistics Pvt. Ltd. While going through these documents, they found some discrepancy in the phytosanitary certificate, and*
 - iii) *On being asked he stated that scrutiny of the documents they found that the phytosanitary certificate issued by the UAE authorities did not tally with the Phytosanitary certificate issued by Chile authorities, when asked about it the Importer could not give satisfactory reply, so they decided not to go further doing clearance of the consignment of Bill of Entry No. 9195475/20.06.2022 imported vide Bill of Lading No. ACLJEAMUN441422 dtd. 16.06.2022.*
 - iv) *On being shown the phytosanitary certificate 2171102, 2171104, 2166630 and 2158829 issued by Chile and phytosanitary certificate for re-export No.DXB-APH-02415-2001307 verification code -204-5854 issued by United Arab Emirates, Ministry of Climate Change and Environment, and further asked to elaborate he stated that as per details available B/E No.9195475/20.06.2022 were covered under ACL/JEA/MUN-4414/22 dated 15.06.2022 which covered three 40 ft. reefer containers HDMU5491336, ALLU697.8520, ACLU9261004 which in total consisted of 7350 boxes of Kiwi*

which came from Jebel Ali, UAE, however there were four bills of Lading of the Kiwi arrived from Chile.

As the phytosanitary certificate No.2067391, 2006063, 1980993 were not the phytosanitary certificate submitted by them, M/s Sharon Enterprises presumed something was wrong and they had refused further clearance of the goods.

- v) The impugned SCN in para 8.6 alleged that the present noticee CHA M/s Sharon Enterprises apparently had not exercised due diligence at the time of filing. It was also admitted at the same place that "However, further they refused to do clearance due to non-availability of sufficient proof of origin of documents.
- vi) The Department vide the impugned SCN proposed inter alia to impose a penalty under Section 117 of Customs Act, 1962 on the present noticee M/s Sharon Enterprises.

Reply to the SCN

- The Noticee M/s Sharon Enterprises reiterated the depositions made in the statement dated 12.02.2024 as referred in the para 4 of the impugned SCN.
- M/s Sharon Enterprises, the noticee, vide their letter dated 24/06/2022 had already informed the department that they would not be clearing the consignment in three containers under Bill of Entry No.9195475 dated 20/8/20022 for importer M/s Choudhary Fruit Company and about their returning of the imported related documents back to the said importer. They specifically informed that they would not clear the said shipment and having surrendered the same. The importer M/s Choudhary Fruit Co., had also informed the Customs Department vide their letter dated 23 June 2022, that M/s Sharon Enterprises had filed the bill of entry and importer was not willing to clear the goods through Customs Broker M/s Sharon Enterprises.
- In para 8.6 of the SCN, the Revenue also admitted that the present noticee viz. M/s Sharon Enterprises had refused to do clearance due to the non-availability of sufficient proof of origin of documents.
- That since the documents submitted by the importer were not clear and as required by them as a Customs Broker, they (M/s Sharon Enterprises) refused to do the work for the Importer. There was no knowledge to M/s Sharon Enterprises, that the goods were actually from which country if not as claimed to be from Chile. In para 8.7 of the notice, the Revenue has clearly admitted that they (M/s Sharon Enterprises) had refused to do clearance due to non-availability of sufficient proof of origin of documents. Since, the sufficient proof of origin of country was not available, they (M/s Sharon Enterprises) were not in a position to say anything in the matter. The Department has also admitted that the case was booked based on an alert received from NCTC dated 23.06.2022 stating that the goods could potentially be of Iran origin. Since, they M/s Sharon Enterprises were not having such resources as cultivation of intelligence and getting alerts from other agencies/organisation, they simply go by the documents produced by the importer and consider it to be bona fide. Whenever they find the documents are not as per our requirement, they do not do the work for such importers.

- It is clear from the facts and circumstances of the case that they had verified the correctness of importer Exporter Code (IEC), verified correctness of Importer Exporter Code (IEC) number, Goods and Services Tax Identification Number (GSTIN), identity of our client and functioning of our client at the declared address by using reliable, independent, authentic documents, data or information and there was nothing adversely alleged in the SCN against us. Further it was stated they had extended full cooperation to the Customs authorities and joined their investigations promptly by honouring the summon etc. Regulation No. 13 (e) of CHALR which reads as under "A.
- Since no information relating to the Origin of Country was imparted by M/s Sharon Enterprises and they discontinued the work on not getting co-operation of the importer in furnishing the relevant documents as requested by the noticee M/s Sharon Enterprises, there is no acts of omission or commission on the part of M/s Sharon Enterprises attracting any penal provisions. In other words, no penalty can be imposed on M/s Sharon Enterprises. In this particular allegation of mis declaration, the noticee M/s Sharon Enterprises was not a party as even there is no allegation that they had any knowledge about it. Therefore, it cannot be alleged that the noticee M/s Sharon Enterprises has not followed the provision regarding 'due diligence' under CBLR, 2018. In the impugned SCN, it is not brought out from evidence that noticee M/s Sharon Enterprises, had in any manner assisted the importer in his alleged activities.
- Further, M/s Sharon Enterprises stated they had exercised due diligence at the time of filling the Bill of Entry. There is no material on record to conclude that they had facilitated mis-declaration of Country of Origin so as to enable the importer to avail undue benefit, if any. Further there is no contravention of any provision of the Customs Act by the noticee M/s Sharon Enterprises. The penalty under Section 117 of the Customs Act, 1962 can be imposed only if abetment on the part of a person is brought out which means that the person should have knowledge or reason to believe that the provisions of the Customs Act (here relating to declaring correct Country of Origin of the goods) were being contravened. No such evidence is forthcoming in this case; therefore, penalty upon the noticee M/s Sharon Enterprises cannot be legally sustained.
- It is well settled that the Customs House Agent is merely an agent to present papers for clearance of import of goods and is not a Revenue officer to investigate into veracity of documents. The noticee CHA M/s Sharon Enterprises is not liable to penalty as they acted bona-fidely; there was no lapse in taking instructions, in filing bill of entry, requesting examination of goods/documents; and further there is no allegation of connivance in the alleged activities of importer.
- There is nothing on record to show that the noticee M/s Sharon Enterprises had knowledge that the goods mentioned in the Bill of Entry did not reflect the truth of the consignment sought to be imported, in the absence of such knowledge, there cannot be mens rea attributed to the noticee M/s Sharon Enterprises, simply because the Bill of Entry was filed on the basis of information provided to it by the importer. The CHA's due diligence is for information that CHA may give to its client and not necessarily to do a background check of either the client or of the consignment. The documents filed by a CHA are on the basis of instructions/documents received from its client/importer, furnishing of wrong or incorrect information cannot be

attributed to the CHA as it was innocently filed in the belief and faith that its client has furnished correct information and veritable documents. The mis-declaration would be attributable to the client if wrong information were deliberately supplied to the CHA.

- Hence there could be no guilt, wrong, fault or penalty on the noticee apropos the contents of the Bill of Entry which the noticee M/s Sharon Enterprises had not continued for non-availability of documents as requested by them. There is no evidence of active facilitation of clearance of the consignment through customs by the noticee Mis Sharon Enterprises, hence, no mens rea can be inferred to defraud the government for obtaining undue benefit through a fraudulent transaction, consequently, the noticee cannot be faulted or punished in the manner as proposed in these circumstances.
- The noticee M/s Sharon Enterprises relied upon the rationes decidendi of the following case laws/ decisions/judgments as the same are applicable in favour of the noticee M/s Sharon Enterprises in the facts and circumstances of the case.
 - a) As held by Hon'ble Delhi High Court in the case of Commissioner of Customs Vs Shiva Khurana in CUSAA No. 45/2017, dated 14th January, 2010 (2019 (367) E.L.T. 550 (Del.)) in the absence of any indication that the Customs House Agent concerned was complicit in the facts of a particular case, it cannot ordinarily be held liable.
 - b) As held by Hon'ble Tribunal in the case of Syndicate Shipping Services Pvt Ltd. v. CC, Chennai (2003 (154) E.L.T. 756 (Tri-Chennai)) in para 5 of the Order that "It has been held in a number of cases that mere failure by the Custom House Agent to carry out his duties in accordance with law by itself is not sufficient ground to impose personal penalty under Section 117 of the Customs Act, 1962 unless there is evidence to show that the failure was on account of mala fide intention".
 - c) Hon'ble Tribunal CEGAT, in the case of Aspinwell & Co. v. CCE, Trichy [2001 (132) E.L.T. 644 (Tri-Chennai)] in para 4 of the order held that the CHA acts under Regulations framed for the purpose, to present papers for clearance of import of goods under Bill of Entry and not to act as an agent as contemplated under Section 147 of the Act. It was also held the authorities had erred in treating the CHA as an agent of the importer under Section 147 of the Act
 - d) Hon'ble Tribunal in the case of A.N. Bhat Vs Collector of Customs, (1991 (55) E.L.T. 580 (Tribunal)), in the last para of the order held that "mere negligence or want of diligence on the part of the Customs House Clearing Agent or the Customs Officers in clearing the goods would not ipso facto render their act culpable inviting penal consequences in law."
 - e) The Hon'ble High Court in case of Kunal Travels (Cargo) Vs Commissioner of Customs, New Delhi (2017-TIOL-894-HC-DEL-CUS) held that no presumption would be made against CHA when there is no active facilitation of clearance of consignment.
 - f) Hon'ble CESTAT in the case of Diamond Shipping Agencies Pvt Ltd V Commissioner of Customs, Tiruchirapalli [2017-TIOL-4151-CESTAT-MAD] in para 6 of the Order has held that "Tribunal in a number of decisions has

observed that it is not the CHA's role to check correctness of importer/exporter" declarations made by

- g) Hon'ble CESTAT in the case of *Schenker India Pvt Ltd Vs Commissioner of Customs Bangalore* [2019-TIOL-2741-CESTAT-BANG] in para 5 of the order has held that "it has been consistently held that if there is no evidence of aiding and abetting against the CHA, then penalty cannot be imposed on CHA (vii)

From all the above, **M/s Sharon Enterprises** submitted that the SCN is completely bad in law and no penalty can be imposed on them. Further, in concluding paras of their written submission dated. 12.12.2024, M/s Sharon Enterprises prayed to drop the proceedings initiated against them vide **Show Cause Notice dated. 10.04.2024** issued vide F.No. CUS/APR/BE/MISC/897/2024 and requested not to impose the penalty under any provisions of Customs Act, 1962

DISCUSSION AND FINDINGS

12. I have carefully gone through facts of the case as mentioned in the Show Cause Notice dated. 10.04.2024, written submissions, record of personal hearing and other available records. I find three opportunities of personal hearing were granted to the Importer alongwith other noticee on **09.12.2024, 07.01.2025 and 10.03.2025**. The Noticee No. 02 & 03 appeared for personal hearing on 07.01.2025 and submitted their written submission. However, the Importer did not appear for personal hearing and no written submission was submitted by them in the matter.

Hence, in the present case principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record.

13. I find that M/s Choudhary Fruit Co. filed a Bill of Entry No. 9195475 dated. 20.06.2022 through the authorized Customs Broker M/s Sharon Enterprises for clearance of the goods declared as 'Kiwi Chile Fresh Kiwi' under CTH-08105000 having declared assessable value of Rs. 32,26,650/- and Country of Origin as 'Chile'.

13.2 I find 'Kiwi' of Iran Origin was prohibited for importation into India from December, 2021 by National Plant Protection Organization (NPPO) under the Agriculture Ministry as per No. 18-23/2015-PP.II (e-16587) dated. 07.12.2021. I find that the goods covered under the said Bill of Entry was put on hold by SIIB, MCH for investigation with regard to confirm the actual 'Country of Origin (COO)' of the goods. The investigating agency sought for load port documents from Chile to Mundra and detailed container movement in respect of containers corresponding to Bill of Lading No. ACL/JEA/MUN-4414/22 dated. 15.06.2022. I further find that M/s Winwin Maritime Limited failed to provide the proof to the effect that the said containers/goods were loaded from Chile.

13.3 Further, it is observed that containers containing Kiwi which arrived from Chile to UAE and containers containing the subject goods loaded from UAE to India were different. It is also noticed that Phytosanitary Certificate No. 2067391, 2006063 & 1980993 mentioned in Phytosanitary Certificate for re-export DXB-APH-02415-2001307 dated. 17.06.2022 issued by the United Arab Emirates (UAE), Ministry of Climate Change & Environment authority was different from the Phytosanitary Certificate No. 2171104, 2166630, 2158829 & 2171102 issued by the Chile authority as can be seen in **Table-A above**.

13.4 I find in order to confirm the claim of the Importer that the goods are of 'CHILE' origin, two summons dated. 05.08.2022 & 16.08.2022 were issued. However, the importer dis-regarded the summons and failed to provide any proof which could established that the goods are of 'CHILE' origin. Although, the Importer submitted letter dated. 25.08.2022 that due to their financial issues, they were unable to clear their consignment and requested for some time. Even after passing of one week from 25.08.2022, no one appeared for clearance of the imported goods from importer, another Summons dated. 02.09.2022 & 13.03.2023 were issued to the Importer to provide relevant documents and tendering statement. However, importer neither provided documents nor appeared for tendering statement which indicates that the importer was fully aware of the fact that the goods 'KIWI' were of 'Iran' origin and therefore to avoid the questioning and further investigation into the matter, the importer never presented himself before the investigation agency i.e SIIB, MCH. This indicates that the importer knowingly and wilfully declared the wrong Country of Origin of the goods.

From the above facts, it is amply clear that the Importer was well aware of the fact that the goods stuffed in the said containers were originated from Iran. Hence, the importer knowingly and intentionally made incorrect declaration for the COO of the goods with a wilful intention to import prohibited goods from Iran to India and never came forward to clear the subject goods, even dis-regarded the summons and did not co-operate with the investigating agency preventing them to bring more evidence on record. Therefore, the Importer rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962 for false and incorrect material on the importation of Chile originated goods.

Hence, by way of mis-declaring the country of origin of the goods, the importer has contravened the provisions of the Section 46(4) of the Customs Act, 1962 and rendered the goods valued at **Rs. 32,26,650/-** liable for absolute confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 and themselves liable for penalty under Section 112 a (i) and Section 114AA of the Customs Act, 1962.

13.5 I find that the destruction of the goods was carried out on the recommendation of Plant Quarantine Station, Mundra vide email dated. 04.10.2022 as the goods was infested with fungal infection in rotten condition and already perished and no one approached for clarifying the origin. The disposal section vide letter dated. 19.10.2022 was requested to initiate the disposal proceedings as Plant Quarantine Station, Mundra had suggested for destruction of the cargo after inspection of the cargo.

It is further observed that the importer vide letter dated. 14.02.2023 submitted that their financial condition is not stable and as regards the residual life of the cargo is not good, they relinquished the title on their goods under Section 23 of the Customs Act, 1962.

14. Role of M/s Sharon Enterprises (CB 1)

I have carefully gone through the written submission dated. 12.12.2024 of M/s Sharon Enterprises. I observe that M/s Sharon Enterprises filed the Bill of Entry No. 9195475 dated. 20.06.2022 for clearance of the subject goods.

I find that M/s Sharon Enterprises filed the Bill of Entry for clearance of the goods. However, later on, M/s Sharon Enterprises found the import documents inappropriate and refused the further clearance/processing of the documents. M/s Sharon Enterprises noticed some discrepancy in the phytosanitary certificate and decided not to clear the shipment.

Further, the submissions made by the M/s Sharon Enterprises indicates that they have verified the KYC details of the Importer through available means. M/s Sharon Enterprises on realisation that the phytosanitary certificate was not proper, they refused to clear the goods indicates that they did not facilitate the importer for clearance of the goods. It is further noticed there is nothing on record that can establish that they facilitated the importer in regard to mis-declaration of Country of Origin. Further, I rely upon the case laws cited by M/s Sharon Enterprises in their written submission **dated. 12.12.2024.**

From the above discussion and on the basis of their written submission, I find that M/s Sharon Enterprises cannot be held responsible for mis-declaration of country of origin of the goods. Hence, I find no reason to penalize M/s Sharon Enterprises. Therefore, penalty under section 117 of the Customs Act, 1962 cannot be imposed on M/s Sharon Enterprises.

15. Role of M/s Service Bureau Logistics LLP (CB 2)

I have carefully gone through the written submission dated. 08.01.2025 of M/s Service Bureau Logistics LLP. I observe that M/s Service Bureau Logistics LLP undertook the work of clearance of the subject goods after M/s Sharon Enterprises refused to clear the goods. M/s Service Bureau Logistics LLP in their submission stated that they had completed the KYC of the importer, However they did not verify and attempt to know as to why the clearance of the subject goods was refused by M/s Sharon Enterprises. They have not submitted any proof on record which can prove that they attempted to verify the '**authenticity of phytosanitary certificate**' before taking clearance work from CB No. 01 M/s Sharon Enterprises.

It was already known to M/s Service Bureau Logistics LLP that the Bill of Entry was filed by another Customs Broker M/s Sharon Enterprises and the work is being re-alloted to them by the importer, still, M/s Service Bureau Logistics LLP did not verify the phytosanitary certificate and undertook the work of clearance of the subject goods which indicates that M/s Service Bureau Logistics LLP **knowingly, internationally attempted to clear the prohibited goods**. Hence, by way of such act, M/s Service Bureau Logistics LLP have rendered themselves liable for penalty **under section 114AA** of the Customs Act, 1962.

Further it is found that M/s Service Bureau Logistics LLP has violated the provisions of the **Regulation 10 (q)** for non-cooperation during investigation and **Regulation 10 (n)** of the Custom Broker Licensing Regulations, 2018 for not verifying the authenticity of documents of country of origin of the subject goods. According, I find M/s Service Bureau Logistics LLP is also liable to penalty under section 117 of the Customs Act, 1962.

16. Based on the above discussion and findings I pass following order.

- a) I order for absolute confiscation of 69825 Kgs of "Kiwi" imported in Containers No. ACLU9261004, ALLU6978520 &HDMU5491336 covered under Bill of Lading No. ACL/JEA/MUN-4414/22 dated 15.06.2022 pertaining to BE No.9195475 dated 20.06.2022 valued at Rs.32,26,650/-

(Rupees Thirty Two Lakhs Twenty Six Thousand Six Hundred and Fifty Only) under Section 111 (d &) 111 (m) of the Customs Act, 1962.

b) I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lakhs Only)** on the Importer **M/s Choudhary Fruit Co. (ABMPH0072Q)** under **Section 112 a (i)** of the Customs Act, 1962.

c) I impose a penalty of on **Rs. 3,00,000/- (Rupees Three Lakhs Only)** the Importer **M/s Choudhary Fruit Co. (ABMPH0072Q)** under **Section 114 AA** of the Customs Act, 1962 for the reasons discussed in Para 13 above.

d) I impose a penalty of **Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only)** on the Customs Broker **M/s Service Bureau Logistics, LLP (ABMPH0072Q)** under **Section 114 AA** of the Customs Act, 1962 for the reasons discussed in Para 15 above.

e) I impose a penalty of **Rs. 50,000/- (Rupees Fifty Thousand Only)** on the Customs Broker **M/s Service Bureau Logistics, LLP (ABMPH0072Q)** under **Section 117** of the Customs Act, 1962 for the reasons discussed in Para 15 above.

f) I refrain from imposing penalty on **M/s Sharon Enterprises** under Section 117 of the Customs Act, 1962 for the reasons discussed in Para 14 above.


(AMIT KUMAR MISHRA)

28.03.2025
ADDITIONAL COMMISSIONER OF CUSTOMS

To

By Speed Post/Email/Hand

1. M/s. Choudhary Fruit Co. (IEC- ABMPH0072Q),
Shop No.30, Floor 2nd Block, C Landmark in Azadpur Mandi, New Delhi
2. M/s Sharon Enterprises,
Office No. M-12, First Floor, Kashish Arcade, Opp.
Centre Palace, Mundra Port Road, Zero Point, Mundra - 370421
3. M/s Service Bureau Logistics LLP,
Plot No. 36, Ward No. 9AH, Subhas Nagar, Gandhidham, Kutch- 370421

प्रति/Copy to :-

- 1) The Dy./Asstt. Commissioner RRA/SIIB/TRC/EDI/Disposal,
Customs House, Mundra.
- 2) Notice Board (to display on Notice Board for all Noticees).