



प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और
एसईजेड, मुंद्रा, कच्छ-गुजरात -370421
**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT**
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A	File No.	CUS/APR/ASS/367/2025-Gr 1-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AKM/322/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	25.02.2025
E	Noticee/Party/ Importer/ Exporter	M/s. Ashirwad Agro Product Plot No. 4/1, Chandigarh, GIDC, Bana, Palanpur-385001
F	DIN No.	20250271MO000000CE87

1. यह अपील 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 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 के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

□ सीमा शुल्क आयुक्त (अपील),
चौथी मंजिल, हुड़को बिल्डिंग, ईश्वर भुवन 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 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 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 झूटि/ 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, 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:-

M/s. Ashirwad Agro Product (IEC: BSUPP0331G) (hereinafter referred to as “the importer” for sake of brevity) having its registered office at Plot No. 4/1, Chandigarh, GIDC, Bana, Palanpur-385001, filed the following Bill of Entry for import of Cashew Husk For Tanning Purpose falling under CTH-14049090 at Mundra Port:-

TABLE -A

Sr. No.	Bill of entry No. and Date	Container No.	Description of goods	Value of goods (in Rs.)	Duty (in Rs.)
1	5736457 dated 21.09.2024	SEGU5537922	Cashew Husk For Tanning Purpose	3,81,377	19069

2. Examination and Investigation:

2.1. Based on the intelligence received from DRI vide email dated 27.09.2024, the container no. SEGU5537922 pertaining to bill of entry no. 5736457 dated 21.09.2024 was put on hold for examination. The examination of above said bill of entry was carried out at Hind Terminals (Unit-2) CFS in presence of Shri Nimesh Kumar Dhuker, H-card (H/MNDR1/202412192) holder of M/s. Star Marine and Shri Anuj Pratap, Sr. Executive-Operations of Hind Terminals (Unit-2), Mundra vide Examination Report dated 03.10.2024 prepared.

2.2. During the course of examination, it was observed that the goods were packed in green colour HDPE bags. The weighment of some randomly selected bags was done and was found that the weight of bags ranges from 32.5 kg to 50 kg. On opening the bags, it appeared that small pieces of cashew kernels had been mixed with the cashew husk in some bags. Thereafter, with the help of labour and surveyor, the bags of goods were quantified. The total quantity of 511 bags were found which did not match with the quantity declared by the importer i.e. 640 bags. Further, on perusal of weighment slip provided by the representative of Hind Terminals (Unit-2), it was noticed that the total weight of cargo i.e. 20050 kg was approximately same as declared in packing list i.e. 19800 KG. Further, to check the characteristics and types of cargo/goods, the representative sample was drawn for further lab-testing.

2.3 The Sample drawn was sent to the CRCL, Kandla for testing vide test memo no. 128/05.10.2024. The CRCL Kandla vide test report Lab No. 6207/08.10.2024 dated 25.10.2024 submitted the lab report. The relevant portion of laboratory test report for the said consignment is reproduced below:-

"The Sample as received is in the form of off white small broken pieces of nuts (appears to be cashew) along with reddish brown crushed vegetative material (flakes). It has the following constants:

1. *Small broken pieces of nuts (% by weight) = 65.6*
2. *Crushed Vegetative material (flakes) (% by weight) = Balance*

End use of the sample u/r may be ascertained at your end.

2.4. The examination report and above said CRCL Kandla Lab test report were sent to the DRI (HQ), New Delhi vide letter F. No. CUS/SIIB/ALT/561/2024-SIIB-O/o Pr Commr-Cus-Mundra dated 29.10.2024. The DRI (HQ), New Delhi, vide email dated 06.11.2024 requested that further investigation & necessary action may be taken by this office under intimation to their office .

3. Classification of the imported goods:

3.1 The test reports received from the CRCL Kandla as discussed above have been examined with respect to the declaration made by the importer to determine the correct and proper CTH of the imported goods. The goods covered under Test Memo no. 128/05.10.2024 are found to be mis-declared in terms of description of the goods as the goods were declared as "Cashew Husk for Tanning Purpose under CTH- 14049090", however, as per test report the goods have 65.6% Small broken pieces of cashew nuts and the remaining 34.4% are Cashew Husk. The said goods are easily separable and the separate tariff items are provided for the classification of the said goods in the Customs tariff. Further, the use of the goods viz. "Cashew nuts and Cashew Husk for Tanning Purpose", are different. Therefore, the correct Classification of the goods is required to be ascertained. It is apparent that, as far as the entries at heading level are concerned, heading 0801 of the Import Tariff specifically include "COCONUTS, BRAZIL NUTS AND CASHEW NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLLED OR PEELED", accordingly, impugned goods appear to be appropriately classifiable under the heading 0801. The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Coconuts:
- ii. Brazil nuts:
- iii. Cashew nuts:

3.1.1 The subheading (i) and (ii) have been ruled out as their composition/specifications do not meet the test results and therefore, the merit subheading of the impugned goods appear to be under (iii), as the description of goods is small broken pieces of cashew nuts under subheading (iii) i.e., cashew nuts. The relevant Tariff item at the double dash (--) level are as follows:

- i. In shell;
- ii. Shelled;

3.1.2 The sub-heading (i), above has been ruled out and as per test results therefore, the merit subheading of the impugned goods appear to be under (ii), i.e. "shelled". The relevant Tariff item at the triple dash (---) level are as follows:

- i. Cashew kernel, broken;
- ii. Cashew kernel, whole;
- iii. Other;

The sub-headings (ii) and (iii), above have been ruled out and as per test results. Therefore, the merit subheading of the impugned goods appears to be under (i), i.e. "Cashew kernel, broken". Accordingly, impugned goods are appropriately classifiable under the heading 08013210. Therefore, as per test report, received from CRCL Kandla, the imported goods appear to be classifiable under CTH 08013210, wherein, the applicable rate of duty is 30% (BCD) + 3% (SWS) + 5% (IGST) per kg.

3.2 The importer has declared goods as "Cashew Husk for Tanning Purpose under CTH-14049090" in the bill of entry no. 5736457 dated 21.09.2024. However, as per test reports received from the CRCL Kandla as discussed above, the goods have 65.6% Small broken pieces of cashew nuts. Therefore, the remaining goods, i.e. 34.4%, appears to be correctly declared in terms of description of the goods as well as CTH. It is apparent that, as far as the entries at heading level are concerned, heading 1404 of the Import Tariff specifically include "Vegetable Products Not Elsewhere Specified or Included". The said Heading covers goods classifiable under the following sub-headings at the single dash (-) level:

- i. Cotton linters:
- ii. Other:

3.2.1 The subheading (i) has been ruled out as their composition/specifications do not meet the goods description found during visual inspection and therefore, the merit subheading of the impugned goods appear to be under (ii), as the description of goods is Cashew Husk. The relevant Tariff item at the triple dash (---) level:

- i. Bidi wrapper leaves (tendu);
- ii. Soap-nuts;
- iii. Hard seeds, pips, hulls and nuts, of a kind used primarily for carving;
- iv. Betel leaves;
- v. Indian katha;
- vi. Coconut shell, unworked;

- vii. Rudraksha seeds;
- viii. Other;

3.2.2 The sub-headings from (i) to (vii), above have been ruled out and as their composition/specifications do not meet the goods description found during visual inspection and therefore, the merit subheading of the impugned goods appear to be under (viii), i.e. "Other". Accordingly, the remaining goods, i.e. 34.4%, are appropriately classifiable under the heading 14049090 wherein the applicable rate of duty is 30% (BCD) + 3% (SWS) + 5% (IGST) per KG.

3.3 The above test results summarised hereunder:-

TABLE -B

Cargo declared	CTH Declared	TM	Test results	Correct CTH	Remarks
Cashew Husk for	14049090	128/ 05.10.2024	Small broken pieces of cashew nuts	08013210	Mis-declared
Tanning Purpose		128/ 05.10.2024	Reddish brown crushed vegetative material (flakes)		Correctly declared

3.4 In view of the above, it appears that the small broken pieces of cashew nuts have been concealed in the guise of Cashew Husk. The "broken Cashew Kernel" is to be classified under CTH-08013210. Therefore, the importer has mis-declared the goods as "Cashew Husk for Tanning Purpose" under CTH- 14049090 instead of correct CTH-08013210 and CTH 14049090. Accordingly, the goods have been found liable for confiscation under Section 111 (d), (f), (i), (l), (m) & (o) and Section 119 of the Customs Act, 1962.

4.1 During the course of investigation, Summons dated 27.10.2024 was issued to the importer i.e. M/s. Ashirwad Agro Product to produce all the relevant documents pertaining to the bill of entry no. 5736457 dated 21.09.2024 and to tender statement. In response, the statement of Shri Mahesh Bhai Prajapati, proprietor of M/s. Ashirwad Agro Product was recorded on 29.10.2024, wherein, he, inter-alia stated that:-

- He looks after day to day work of the firm and their firm is engaged in import, trading and processing of Raw Cashew Nut (RCN).
- They have imported Cashew husk (CTH-14049090) vide bill of entry no. 5736457 dated 21.09.2024.
- After perusing test report "Lab no. SIIB 6207/08.10.2024" received from CRCL, Kandla, he accepted the test report and stated that they have

placed order for the cashew husk and submitted purchase order for the same but the exporter has wrongly sent these goods. On clarification from the exporter, they came to know that the cashew husk is the by-product of the process performed for obtaining cashew kernels. Thereafter, the cashew husk is separated from small broken cashew (baby bite). But in the present case, the exporter has not separated small broken cashew (baby bite) from the cashew husk and sent the un-cleaned product.

- On being enquired that as per DGFT import Policy, the import of Cashew kernel, broken under CTH 08013210 is prohibited. However, import is free if CIF value is above Rs. 680/- per Kg. From the Test Report Lab no. SIIB 6207/08.10.2024, it appears that broken cashew kernel is concealed in the goods imported vide bill of entry no. 5736457 dated 21.09.2024. He stated that the un-cleaned product is not for the tanning purpose for which they have imported the said goods and not fit for their processes. Therefore, they would like to re-export the consignment. They have communicated the same to their exporter and he is also ready to take it back due to his mistake.
- He further submitted that they are ready to pay any fine/penalty mentioned under the Customs Act and don't want any SCN/PH in the instant case and will submit letter regarding the same.

4.2 Thereafter, another Summons dated 11.12.2024 was issued to the importer to tender statement pertaining to the above said bill of entry. In response, a statement of Shri Mahesh Bhai Prajapati, proprietor of M/s. Ashirwad Agro Product was recorded on 11.12.2024, wherein, he, inter-alia stated that:-

- In his statement dated 29.10.2024, he had stated that in the present case, the exporter has not separated small broken cashew (baby bite) from the cashew husk and sent the un-cleaned product. However, as per test report "Lab no. SIIB 6207/08.10.2024", the sample contains broken pieces of nuts and the same appears to be falling under CTH-08013210. On being asked about the test report, he stated that he had explained the process of obtaining cashew kernels in his reply. However, in respect of goods pertaining to BE no. 5736457 dated 21.09.2024, he submitted that there are broken pieces of cashew kernels and the same needs to be classified under CTH-08013210.
- As per DGFT import Policy, the import of "*Cashew kernel, broken*" under CTH 08013210 is prohibited. However, import is free if CIF value is above

Rs. 680/- per Kg. From the Test Report Lab no. SIIB 6207/08.10.2024, it appears that broken cashew kernel is concealed in the goods imported vide bill of entry no. 5736457 dated 21.09.2024. On being asked about the same, he stated that he agreed with the DGFT policy and also agreed that there were broken cashew kernels (CTH-08013210) in the consignment imported vide bill of entry no. 5736457 dated 21.09.2024.

- He further submitted that they are ready to pay any fine/penalty mentioned under the Customs Act and don't want any SCN/PH in the instant case and will submit letter regarding the same. Further, he requested to give permission for re-export of the goods pertaining to BE no. 5736457 dated 21.09.2024.

From the above, it appears that, the importer has mis-classified the imported goods under CTH 14049090 instead of correct CTH - 08013210 as detailed in para-supra with an intention to evade payment of the applicable customs duty. Consequently, the imported goods appear liable to be re-classified in different CTH arrived on the basis of lab test results as discussed in para-supra and are also appear liable to be re-assessed accordingly. It appears that the goods, i.e. broken cashew kernel, have been imported in the guise of Cashew Husk. The "broken Cashew Kernel" is classifiable under CTH-08013210. However, the importer has classified all the goods imported vide bill of entry no. 5736457 dated 21.09.2024 under CTH- 14049090 and mentioned the description of goods as "Cashew Husk for Tanning Purpose". However, as per CRCL Kandla test report "Lab no. SIIB 6207/08.10.2024", there are 65.6% Small broken pieces of cashew nuts. Therefore, the entire goods do not fall under the category of Cashew Husk. The importer has also agreed with the above said test report and stated in his statement that they agree with the DGFT policy and also agreed that there are broken cashew kernels (CTH-08013210) in the consignment imported vide bill of entry no. 5736457 dated 21.09.2024. The importer has also requested to give permission for re-export of the goods pertaining to BE no. 5736457 dated 21.09.2024. As per Test report, cargo are of two types (1) Broken cashew Kernel (2) Cashew Husk. The details of cargo are mentioned hereunder:-

TABLE -C

Sr. No.	Test Memo No.	Goods ascertained	Classification of goods	Weight in Kgs
1	128/05.10.2024	Broken cashew Kernel	08013210	13153
2	128/05.10.2024	Cashew Husk	14049090	6897

5. Rejection of declared Value & Redetermination of Assessable value:

5.1 Since as per the Lab test report received from CRCL Kandla, the goods imported vide Bill of entry no. 5736457 dated 21.09.2024, were found mis-declared in terms of classification. Therefore, the value of item declared by the importer in the Bill of Entry did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as "CVR, 2007" for sake of brevity) and therefore, the same appears liable to be rejected in terms of Rule 12 of CVR, 2007.

5.2 The import of broken Cashew Kernel is prohibited as per the schedule-I Import Policy of the DGFT. The Notification No. 59/2015-20 dated 21.02.2023 has amended the import policy for broken Cashew Kernel. The same is reproduced hereunder:

ITC (HS) Code	Item Description	Import Policy	Existing Import Policy	Revised Import Policy
08013210	<i>Cashew Kernel, broken</i>	<i>Prohibited</i>	<i>However, import is free if CIF value is above Rs. 680/- per KG.</i>	<ol style="list-style-type: none"> <i>However, import is free if CIF value is above Rs. 680/- per KG.</i> <i>MIP conditions, however, shall not be applicable for imports by 100% Export Oriented Units (EOUs) and units in the SEZ.</i> <i>SEZs and EOUs units shall not be allowed to sell the imported Cashew Kernels into Domestic Tariff Area (DTA).</i>

5.3 From the above, it is observed that the CIF value must be above Rs. 680/- per KG for the import of broken Cashew Kernel. In view of the above, the assessable value of the goods, i.e. Broken cashew Kernel, appears liable to be re-determined. Accordingly, the assessable value of the goods i.e. Broken cashew Kernel, comes to the tune of Rs. 89,57,193/- as per the MIP conditions for the import of "*Cashew Kernel, broken*" under CTH-08013210.

Further, the importer has declared the CIF value of Rs. 19458/- (230 USD * 84.6) Per MT for the import of Cashew Husk. As per Lab test report, received from CRCL Kandla, the weight of goods, i.e. Cashew Husk, appears to be only 6897 KGs instead of 20050 KGs declared in the said bill of entry. In

view of the above, the assessable value of the goods, i.e. Cashew Husk, appears liable to be re-determined. Accordingly, the assessable value of the imported goods i.e. "Cashew Husk for Tanning Purpose" are re-determined as Rs. 1,34,202/- as per the unit price declared by the importer in the said bill of entry i.e. Rs. 19.458/- per MT (as detailed in TABLE-D). Therefore, it appears that the total assessable value of goods imported vide bill of entry no. 5736457 dated 21.09.2024 comes to the tune of Rs. 90,91,395/-. The details of the same are as under:

TABLE -D

Sr. No.	Goods Found	Weight (in Kgs)	CIF Value (in Rs.)
1	Broken cashew Kernel	13153	8957193/- (Rs. 681/- per Kg)
2	Cashew Husk	6897	1,34,202/- (Rs. 19458/- per MT)
Total			90,91,395/-

Accordingly, the total assessable value of the imported goods is re-determined as **Rs. 90,91,395/-** instead of total assessable value of **Rs. 3,81,377/-** as declared in the said BE and the duty, as per new CTH and re-determined assessable value, is calculated as under:-

TABLE-E

Sr No.	Declared Goods	CTH declared	Goods found	Correct CTH	CIF Value (in Rs.)	BCD@30% (in Rs.)	SWS@3% (in Rs.)	IGST@5% (in Rs.)	Total Duty (in Rs.)
1	Cashew Husk for Tanning Purpose	14049090	Broken cashew Kernel	08013210	8957193	2687158	268716	595653	3551527
2		14049090	Cashew Husk	14049090	134202	40261	4026	8924	53211
Total									36,04,738/-

5.4 The importer has availed the Country of Origin based exemption on declared goods, i.e. "Cashew Husk for Tanning Purpose", from applicable Customs duty as per Notification No. 46/2011-Customs dated 01.06.2011 amended by the Notification no. 57/2013-Cus dated 31.12.2013. The Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 provides for procedure regarding claim of preferential rate of duty. The relevant provisions of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 are reproduced below:-

Rule 4. *"Origin related information to be possessed by importer.-*

The importer claiming preferential rate of duty shall-

(c) exercise reasonable care to ensure the accuracy and truthfulness the aforesaid information and documents.”

Rule 8. “Miscellaneous. –

(2) Where it is established that an importer has suppressed the facts, wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.”

As per CRCL Kandla test report Lab No. 6207/08.10.2024 dated 25.10.2024, the goods have been found to be mis-declared, wherein it is mentioned that the sample has 65.6% Small broken pieces of cashew nuts (broken Cashew Kernel). The “broken Cashew Kernel” is classifiable under CTH-08013210, wherein the MIP conditions of Rs. 680/- per KG is applicable to make the import policy “free” from “prohibited”. The importer has imported prohibited goods, i.e. broken Cashew Kernel, by way of concealment in the guise of Cashew Husk. Therefore, the importer has mis-declared the goods & suppressed the facts to evade the applicable Customs duty to avail undue benefit of a trade agreement. Accordingly, it appears that the benefit of preferential rate of duty is liable to be disallowed on the goods i.e. Cashew Husk.

5.5 From the above **TABLE-E**, it appears that the importer was liable to pay the duty (BCD + SWS + IGST) of Rs. 35,51,527/- on the import of goods i.e. Broken cashew Kernel. Thus, there appears to be non/short levy of Customs duty amounting to Rs. 35,51,527/-. Thus, in view of the act of omission and commission at the level of importer, it appears that, these goods are liable for confiscation under section 111 (d), (f), (i), (l), (m) & (o) of the Customs Act, 1962.

5.6 From the above **TABLE-E**, it appears that the importer was liable to pay the duty (BCD + SWS + IGST) of Rs. 53,211/- on the import of declared goods i.e. Cashew Husk. Thus, there appears non/short levy of Customs duty amounting to Rs. 53,211/-. Thus, by the act of omission and commission at the level of importer, it appears that, these goods are liable for confiscation under Section 111(m), (o) and Section 119 of the Customs Act, 1962.

6. **RELEVANT LEGAL PROVISIONS:**

(A) RELEVANT PROVISIONS OF CUSTOMS ACT, 1962:

Section 2(22): “goods” includes (a) vessels, aircrafts and vehicles; (b) stores; (c)

baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;

Section 2(23): “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(25): “imported goods”, means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption;

Section 2(26): “importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;

Section 2(39): “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

Section 11A: “illegal import” means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

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, relating to the imported goods.

(4A) the importer who presents a bill of entry shall ensure the following, namely:

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

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

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(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;;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an [arrival manifest or import manifest] or import report which are not so mentioned;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

(l) any dutiable or prohibited goods which are not included or are in excess of

those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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

Any person,-

a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(b) *.....,*

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, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:*

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 [one lakh rupees] [Substituted by Act 18 of 2008, Section 70, for "ten thousand rupees"].*

Section 119. *Confiscation of goods used for concealing smuggled goods. –*

"Any goods used for concealing smuggled goods shall also be liable to confiscation."

7. Summary of Investigations Conducted:

7.1 The importer M/s Ashirwad Agro Product (IEC BSUPP0331G), had filed Bill of Entry No. 5736457 dated 21.09.2024 at Mundra port (INMUN1) through their Custom Broker M/s Star Marine, for import of "Cashew Husk For Tanning

Purpose". The said bill of entry was put on hold on the basis of intelligence received from DRI, Delhi.

7.2 Whereas, on the basis of the Lab test report received from CRCL Kandla and investigation carried out in this regard, it appears that the importer has mis-classified the goods i.e. "Cashew Husk For Tanning Purpose" under CTH 14049090. Further, the quantity (in respect of number of bags) of goods have also been found mis-declared. These facts have also been admitted by the Proprietor of M/s. Ashirwad Agro Product in his statement dated 29.10.2024 and 11.12.2024. The importer has imported "*broken Cashew Kernel*" by way of concealment in the guise of declared goods, i.e. *Cashew Husk*. As per DGFT import policy for the goods, i.e. Broken cashew Kernel, its import is prohibited as per Notification no. 59/2015-20 dated 21.02.2023. The said import policy is free subject to condition that CIF value is above Rs. 680/- per Kg. Therefore, it appears that the importer has mis-declared the goods i.e. "*broken Cashew Kernel*" as "*Cashew Husk*" to evade the applicable Customs duty. Accordingly, it appears that, the importer has failed to declare true and correct description, CTH as well as assessable value of the goods i.e. "*broken Cashew Kernel*" imported vide the said BE and hence, the cargo is liable for confiscation under section 111 (d), (f), (i), (l), (m) & (o) of the Customs Act, 1962.

7.3 Accordingly, the assessable value of the imported goods i.e. "*broken Cashew Kernel*" are re-determined as **Rs. 89,57,193/-** as per Notification No. 59/2015-20 dated 21.02.2023. Accordingly, total duty on these imported goods comes to the tune of Rs. 35,51,527/- as discussed in para-supra. Thus, there appears to be non/short levy of Customs duty amounting to Rs. 35,51,527/-. Thus, in view of the act of omission and commission at the level of importer, it appears that, the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information in the Bill of Entry and also failed to assess their duty liability correctly and hence appears to be liable for penalty under section 112(a)(i) of the Customs Act, 1962.

7.4 As per test report Lab No. 6207/08.10.2024 dated 25.10.2024 received from CRCL Kandla, the consignment have 65.6% Small broken pieces of cashew nuts (*broken Cashew Kernel*). However, the importer has declared goods as Cashew Husk for Tanning Purpose under CTH-14049090 in the said bill of entry. Therefore, the declared goods Cashew Husk have been used for the concealment of prohibited goods, i.e. broken Cashew Kernel, to evade the applicable Customs duty. Further, the quantity (in respect of number of bags) of goods have also been found to be mis-declared. Accordingly, it appears that the importer has failed to declare true and correct description, CTH as well as

assessable value of the goods imported vide the said BE and hence, the goods i.e. "Cashew Husk for Tanning Purpose" appear to be liable for confiscation under Section 111(m), (o) & Section 119 of the Customs Act, 1962.

7.5 Accordingly, the assessable value of the imported goods i.e. "Cashew Husk for Tanning Purpose" are re-determined as Rs. 1,34,202/- as per the unit price declared by the importer in the said bill of entry. Accordingly, total duty on these imported goods comes to the tune of Rs. 53,211/- as discussed at para-supra. Thus, there appears non/short levy of Customs duty amounting to Rs. 53,211/-. Thus, in view of act of omission and commission at the level of importer, it appears that, the importer has contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly and hence appear to be liable for penalty under section 112(a)(ii) of the Customs Act, 1962. The relevant portion of said provisions is as under:

Section 17. Assessment of duty. –

(1) *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

..

(4) *Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

Section 46. Entry of goods on importation. –

(1) ***The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:***

7.6 The importer vide letter dated 30.11.2024 (**RUD-11**) requested to waive issuance of any show cause notice and personal hearing in relation to goods imported under bill of entry no. 5736457 dated 21.09.2024. Further, they have informed that they fully understand and accept the customs law and in good faith, they are prepared to pay any applicable duty/fine and penalty.

Further, vide letter dated 26.12.2024 (**RUD-12**), the importer requested for waiver from Show Cause Notice & personal hearing & informed that they do not want any SCN and PH in relation to goods imported under bill of entry no.

5736457 dated 21.09.2024. Further, they have agreed to pay Customs duty and fine, penalty, if any and also requested permission for re-export of cargo. Also informed that they will never raise an appeal or claim back any benefit.

8. In view of the above facts, it appears that –

- i. The classification of the goods i.e. 14049090 as declared by the importer in the Bill of Entry No. 5736457 dated 21.09.2024 is liable to be rejected and the goods are liable to be re-classified under different CTHs as discussed at para 3.1, 3.2 & 3.3 of this IR in accordance with the CRCL lab test reports.
- ii. The total assessable value of the imported goods is liable to be re-determined as Rs. 90,91,395/- (Rupees Ninety Lakh Ninety One Thousand And Three Hundred Ninety Five Only), as discussed at para 5.3 of this IR instead of Rs. 3,81,377/- (Rupees Three Lakh Eighty One Thousand And Three Hundred Seventy Seven Only) as declared in the Bill of Entry No. 5736457 dated 21.09.2024 in accordance with the CVR, 2007 read with Section 14 of the Customs Act, 1962.
- iii. The benefit of Country of Origin based exemption on declared goods, i.e. "Cashew Husk for Tanning Purpose", from applicable Customs duty as per Notification No. 46/2011-Customs dated 01.06.2011 as amended vide Notification no. 57/2013-Cus dated 31.12.2013 is liable to be denied as discussed at para 5.4 of this IR under Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.
- iv. Total Customs duty involved in the imported goods comes to **Rs. 36,04,738/-** (Rupees Thirty Six Lakh, Four Thousand And Seven Hundred Thirty Eight Only) as discussed at Para 5.3 of this IR.
- v. The said Bill of Entry No. 5736457 dated 21.09.2024 is liable to be re-assessed under Section 17(4) of the Customs Act, 1962.
- vi. The goods i.e. Broken cashew Kernel having re-determined value of **Rs. 89,57,193/-** have been imported by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 and are therefore liable for confiscation under Section 111 (d), (f), (i), (l), (m) & (o) of the Customs Act, 1962.
- vii. The imported goods i.e. Cashew Husk having re-determined value of **Rs. 1,34,202/-** have been used for the concealment of the goods i.e. Broken cashew Kernel and are therefore liable for confiscation under Section 111(m), (o) and Section 119 of the Customs Act, 1962.
- viii. The importer i.e., M/s. Ashirwad Agro Product, holding IEC No: BSUPP0331G are liable for Penalty under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962.

9. Submission:-

9.1. Further, it is submitted to consider the following points while adjudicating the matter:

- i. The goods as such don't have that value as determined in the Investigation report. If the penalty and fine are imposed as per the value determined by the Investigating officer, it shall be of no use and they will not be able to claim the goods.
- ii. The value of the goods paid by them is in accordance to the purchase agreement, which they had submitted to the Investigation during the statement procedure. The copy of the Agreement no TM/AAP/2304 dated 10.12.2023 is also enclosed herewith for your reference. The payment swift of the current shipment is also enclosed herewith which indicates that the payment are made in accordance to the invoice, and corresponding contract. (Encl. 1), wherein it is mentioned that the CIF value of the goods is USD 230 Mts. They have been importing cashew husk for a long period of time and they have never faced any such issues as they have faced in the instant case. The copy of the previous purchase agreement no TM/AAP/2303 dated 20.10.2023, the corresponding invoice TV.OM/AAP/2303-18 TM/AAP/2303-2, the Swift copy and the Bill of Entry No 2618764 Dt. 18.03.2024 & 3945369 DTN 1.06.2024 are enclosed for your reference, which indicates that the value of the goods has always been as per the agreement and the actual invoice received. Da
- iii. The value of the goods has been calculated in terms of the DGFT Notification 59/2015-20 dated 21.02.2023 and in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In this regard, as they don't want to import the goods in India and want to re-export the goods, the Minimum Import Price in terms of the DGET Notification 59/2015-20 dated 21.02.2023 is not applicable in the instant case. The said notification is applicable only when someone wants to import cashew nuts in India not for export of the cashews.
- iv. They have assessed the duty as per Section 17(1) of the Customs Act, 1962 as per the transaction value of the goods as per invoice, contract and remittance. After investigation, the value of the goods has been re-determined as per DGFT Notification No. 59/2015-20 dated 21.02.2023 read with Section 14 of the Customs Act, 1962. However, as they do not want to clear goods for home consumption, the procedure followed to re-determine the value of the goods in terms of Section 14 of customs Act, read with Customs Valuation Rules 2007 to reassess the duty leviable on the subject goods under Section 17(4) is of no significance.
- v. In view of the above, it is submitted that they do not want to clear the goods for home-consumption and requested to allow re-export of the goods

to the supplier. For the mistake/failure of the supplier to send the agreed goods, they can't be made to face such a huge penal action. Further it is submitted that, they are not ready to pay such Customs Duty on such a re-determined high value of the subject goods. Furthermore, the goods in the manner, as it has been imported, is of no use. They are ready to pay the fine and penalty as imposed by the adjudicating authority.

- vi. Since they have already incurred heavy losses on the subject shipment, it is requested to kindly consider the above points and take a lenient view while determining the quantum of redemption fine and penalty.
- vii. It is requested to waive them from personal hearing, show cause notice and allow re-export of the goods imported BE no 5736457 dated 21.09.2024.

Show Cause Notice and Personal Hearing:-

10. It is noted that before issuance of Investigation report No. 107/2024-25 dated 16.01.2025, the importer has requested vide letter dated 12.11.2024 for waiver of the show cause notice and personal hearing in the matter. Further, even now, the said importer vide letter dated 12.02.2025 has requested for waiver of SCN and Personal Hearing.

Discussion and Findings:-

11. I have gone through the records of the case, legal provisions mentioned above and note that the importer has requested for waiver of SCN and PH in the matter. Thus, the principal of natural justice has been followed. Now, I proceed to decide the case.

11.1. I note from the available records that the importer has filed BE No.5736457 dated 21.09.2024 for import of the 'Cashew Husk For Tanning Purpose' under CTH 14049090 valued at Rs. 3,81,370/-. The total duty payable as declared by the importer is Rs. 19,069/-. On the basis of specific intelligence from DRI New Delhi, the said consignment was investigation by the SIIB Mundra and samples were drawn and sent to CRCL Kandal, who has submitted the test report Lab No. 6207/08.10.2024 dated 25.10.2024. The relevant portion of laboratory test report for the said consignment is reproduced below:-

"The Sample as received is in the form of off white small broken pieces of nuts (appears to be cashew) along with reddish brown crushed vegetative material (flakes). It has the following constants:

1. Small broken pieces of nuts (% by weight) = 65.6
2. Crushed Vegetative material (flakes) (% by weight) = Balance

End use of the sample u/r may be ascertained at your end.

11.2. It is noted from the lab report received from CRCL Kandla that the said consignment of imported goods is having **65.6% Small broken pieces of cashew nuts** and **the remaining 34.4% are Cashew Husk**. The said goods are easily separable and the separate tariff items are provided for the classification of the said goods in the Customs tariff. As per the investigation, 65.6% of the imported goods contains 'Cashew Kernels broken' and appears to be classifiable under CTH 08013210. Further, 35.4% of the goods are found as correctly classifiable under CTH 14049090 as 'Cashew Husk for Tanning Purpose'. It is also noted that the import of the goods of CTH 08013210 is prohibited. However, **import is free if CIF value is above Rs. 680/- per Kg**. The quantity of the goods of CTH 08013210 is 13153 KGs, thus, value the goods @ 680 per KG is determined as **Rs. 89,44,040/-**. The MIP is applied to make Broken Cashew Kernels "free" from "prohibited". Further, the quantity of the goods declared under CTH 14049090 is 6,897 KGs whose value is **Rs. 1,34,202/-**. The goods importer vide said BE is accordingly liable for re-classification i.e. 6897 KGs are liable for classification under CTH 14049090 and 13,153KGs are liable for classification under CTH 1,34,202.

11.3. I also note that the importer has plead that since they do not want to clear goods for home consumption, the re-determination of value of 13,153 KGs of Cashew Kernels as per DGFT Notification No. 59/2015-2020 dated 21.02.2023 on the basis of MIP is not justifiable. However, I take note that the said importer has filed the Bill of Entry No. 5736457 dated 21.09.2024 for home consumption. The consignment was investigated by SIIB Mundra on the basis of specific intelligence of DRI (HQ), New Delhi. During investigation, the cashew kernels are found concealed in 'Cashew Husk'. If the consignment was not investigation, then, the importer would have cleared the goods in India. Therefore, it is a case of mis-classification and concealment of the goods. I reject the plea of the importer and agrees with the re-determined value of Cashew Kernels as per DGFT Notification, supra and hold that the value said BE is liable for re-assessment under Section 17(4) of the Customs Act, 1962. In view of above, the submission of the importer that the supplier has mis-sent the consignment without separating small broken cashew (baby bite) from the cashew husk is also not sustainable.

11.4. In view of above, I found that the importer has declared the value of the consignment as Rs. 3,81,377/-, whereas, the value of the consignment is **Rs. 90,91,395/- [Rs. 89,44,040/- of cashew kernels+ Rs. 1,34,202/- of cashew husk]**. Thus, the importer has mis-declared the value of the consignment and has also not correctly classified the imported good. It is noted that the importer has used the goods of CTH 14049090 i.e. cashew husk for

tanning purpose to conceal the goods of CTH 08013210 'Broken Cashew kernels'. Thus, the concealed used goods of CTH 08013210 are liable for confiscation under Section 111(d), (f)(i), (l), (m) & (o) of the Customs Act, 1962. Further, the goods which are used for concealment i.e. 'Cashew Husk for Tanning Purpose' – CTH 14049090 are liable for confiscation under Section 111(m), 111(o) and Section 119 of the Customs Act, 1962.

11.5. Further, it is also revealed during investigation by SIIB that the total duty leviable on the un-declared 'Broken Cashew Kernel' CTH 08013210 is Rs. 35,51,527/- and the duty leviable on the declared goods of CTH 14049090 is Rs. 53,211/-. However, I note that the importer has requested to allow them re-export of the goods, therefore, there is no point to demand duty from the importer.

11.6. I also note from the Investigation Report that proposal of penalty under Section 112(a)(i) has been made. The importer has filed said BE in order to import Cashew Kernels concealed in cashew husk. The value of the cashew kernels is not declared as per the DGFT Notification i.e. not as per MIP of Rs. 680/- per KG, thus, the goods are prohibited. I hold that the importer is liable for penalty under Section 112(a)(i) for the import of 13,153 KGs of cashew kernels having assessable value of Rs. 89,57,193/-.

11.7. As regards, the product of CTH 14049090- Cashew Husk for tanning purpose, it is found that the importer has used the said goods to conceal the 'Broken Cashew Kernels', thus, the said goods of CTH 14049090; total 6897 KGs having Assessable value of Rs. 1,34,202/- [duty Rs. 53,211/-] are liable for confiscation under Section 111(m), 111(o) and Section 119 of the Customs Act, 1962. The importer is liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

11.8. I further note that the importer has availed the benefit of Country of Origin based exemption on declared goods, i.e. "*Cashew Husk for Tanning Purpose*", from applicable Customs duty as per Notification No. 46/2011- Customs dated 01.06.2011 amended by the Notification no. 57/2013-Cus dated 31.12.2013. I take note of the Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 which provides for procedure regarding claim of preferential rate of duty. The relevant provisions of the Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020 are reproduced below:-

Rule 4. "*Origin related information to be possessed by importer.* -

The importer claiming preferential rate of duty shall-

(c) exercise **reasonable care to ensure the accuracy and truthfulness the aforesaid information and documents.**”

Rule 8. “*Miscellaneous.* –

(2) *Where it is established that an importer has suppressed the facts, wilful mis-statement or colluded with the seller or any other person, with the intention to avail undue benefit of a trade agreement, his claim of preferential rate of duty shall be disallowed and he shall be liable to penal action under the Act or any other law for the time being in force.”*

As per CRCL Kandla test report Lab No. 6207/08.10.2024 dated 25.10.2024, the goods have been found to be mis-declared, wherein it is mentioned that the sample has 65.6% Small broken pieces of cashew nuts (broken Cashew Kernel). The “broken Cashew Kernel” is classifiable under CTH-08013210, wherein the MIP conditions of Rs. 680/- per KG. The importer has filed BE to import cashew kernels below MIP, thus, the import of cashew kernels is prohibited. The importer has imported prohibited goods, i.e. broken Cashew Kernel, by way of concealment in the guise of Cashew Husk. Therefore, the importer has mis-declared the goods & suppressed the facts to evade the applicable Customs duty to avail undue benefit of a trade agreement. Accordingly, it appears that the benefit of preferential rate of duty is liable to be disallowed on the goods i.e. Cashew Husk. Further, no benefit of COO is available for the un-declared goods of CTH 08013210 as per Notification No. 46/2011-Customs. The said BE is accordingly liable for re-assessment after removing the benefit of COO.

12. In view of above, I pass following Order:-

- a. I order to reject the classification of the goods declared by the importer under CTH 14049090. I order to re-asses the said BE under Section 17(4) of the Custom Act, 1962 i.e. Total 13153 KGs of imported goods having valued @ Rs. 89,57,193/- are classifiable under CTH 08013210 and 6897 KGs of goods having value as Rs. 1,34,202/- are classifiable under CTH 14049090;
- b. I order to re-determine the value of imported goods as **Rs. 90,91,395/- (Rupees Ninety Lakh Ninety One Thousand And Three Hundred Ninety Five Only)** [Rs. 1,34,202/- plus Rs. 89,57,193/-] in accordance with the CVR, 2007 read with Section 14 of the Customs Act, 1962.
- c. I order to deny the benefit of Country of Origin based exemption on declared goods, i.e. “Cashew Husk for Tanning Purpose”, from applicable Customs duty as per Notification No. 46/2011-Customs dated 01.06.2011

as amended vide Notification no. 57/2013-Cus dated 31.12.2013 under Section 28DA of the Customs Act, 1962 read with Customs (Administration of Rules of Origin under Trade Agreements) Rules, 2020.

- d. I order to confiscate that the goods i.e. Broken cashew Kernel having re-determined value of Rs. 89,57,193/- by way of mis-declaration in contravention of Sec 46 of the Customs Act, 1962 under Section 111 (d), (f), (i), (l), (m) & (o) of the Customs Act, 1962. However, as per request of the importer, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 12,00,000/- (Rs. Twelve Lakhs only)** under Section 125 of the Customs Act, 1962 for **re-export purpose only**.
- e. I further order to confiscate the imported goods i.e. Cashew Husk having re-determined value of **Rs. 1,34,202/-** have been used for the concealment of the goods i.e. Broken cashew Kernel under Section 111(m), (o) and Section 119 of the Customs Act, 1962. However, as per request of the importer, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 13,421/- (Rs. Thirteen Thousand Four Hundred Twenty One Only)** under Section 125 of the Customs Act, 1962 for **re-export purpose only**.
- f. I impose a penalty of **Rs. 8,00,000/- (Rs. Eight Lakhs Only)** on the said importer under Section 112 (a)(i) of the Custom Act, 1962 for import of prohibited cashew kernels having assessable value of Rs. 89,57,193/-.
- g. I also impose a penalty of **Rs. 5000/- (Rs. Five Thousand Only)** on the said importer under Section 112 (a)(ii) of the Custom Act, 1962 on the goods i.e. cashew husk used for concealment of cashew kernels.

12. This order is issued without prejudice to 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.

Signed by
 Amit Kumar Mishra
 (AMIT KUMAR MISHRA)
 Date: 25-02-2025 11:56:13
 ADDITIONAL COMMISSIONER
 Custom House, Mundra

F.No. I/2696729/2025

Date: 25-02-2025

To,
 M/s. Ashirwad Agro Product
 Plot No. 4/1, Chandigarh, GIDC, Bana, Palanpur-385001

Copy to:

1. The Deputy/Assistant Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy/Assistant Commissioner (SIIB), Custom House, Mundra for information in respect of IR No. 107/2024-25 dated 16.01.2025.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. Guard File.