

	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA- 370421 <u>Phone No.02838-271165/66/67/68 FAX.No.02838- 271169/62</u>
A. File No.	: CUS/ASS/MISC/487/2024-EA-O/o Pr-Commr-Cus-Mundra
B. Order-in- Original No.	: MCH/ADC/MK/ 79 /2024-25
C. Passed by	: Mukesh Kumari, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order /Date of issue	: 25-06-2024
E. Show Cause Notice No. & Date	: Exporter requested for Waiver of SCN & PH
F. Noticee(s)/Party/ Exporter	: M/s. Gandhi Enterprise, E-49 RICO Industrial Area, Phalodi- 342301, Jodhpur, Rajasthan
G. DIN	: DIN:20240671MO000000EFFE

1. यह अपील आदेश संबन्धित 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 हैं 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),

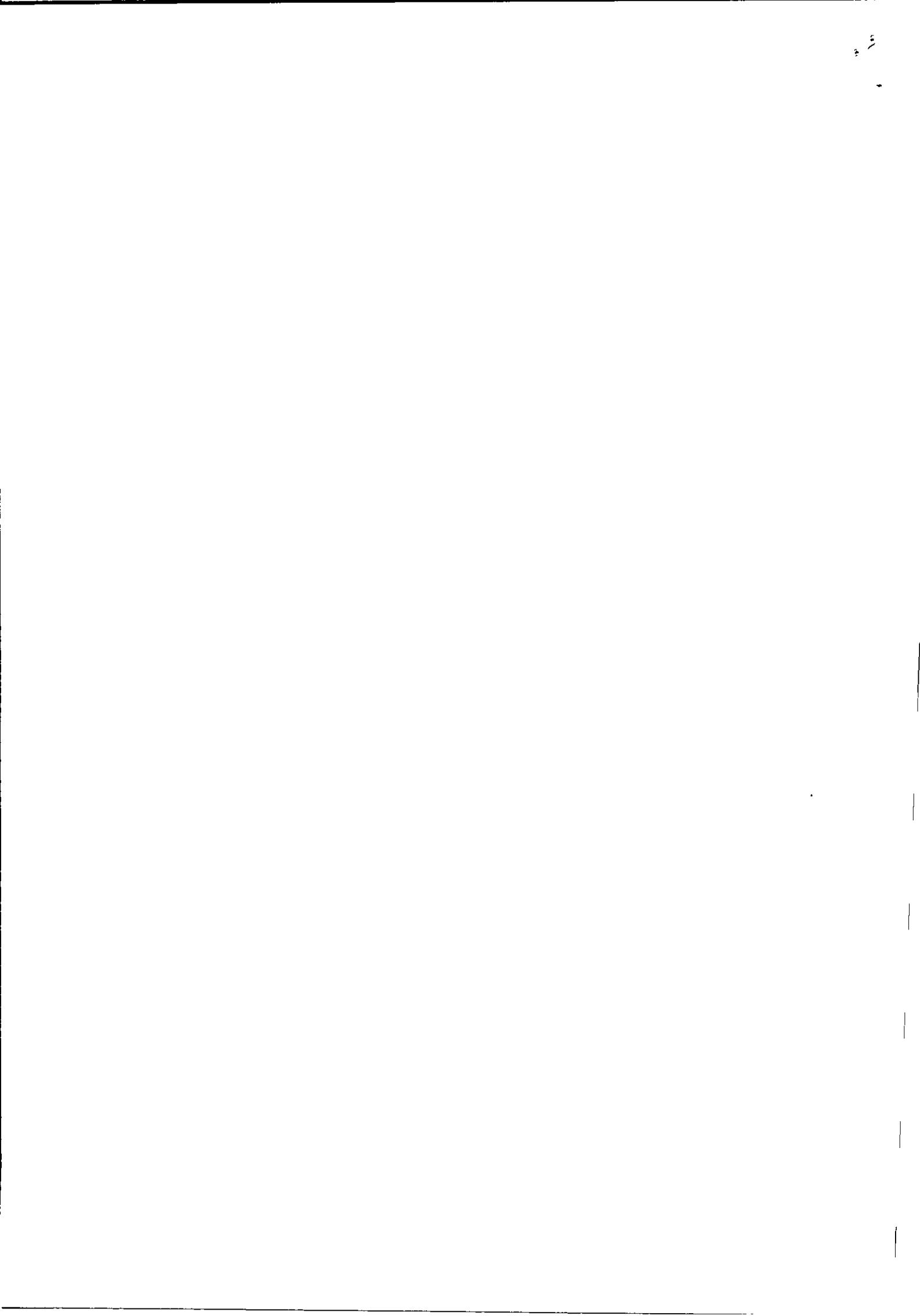
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009"

"THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, 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 जापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए ।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क ,और सीमा शुल्क अधिनियम 1982,अपील) नियम 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.

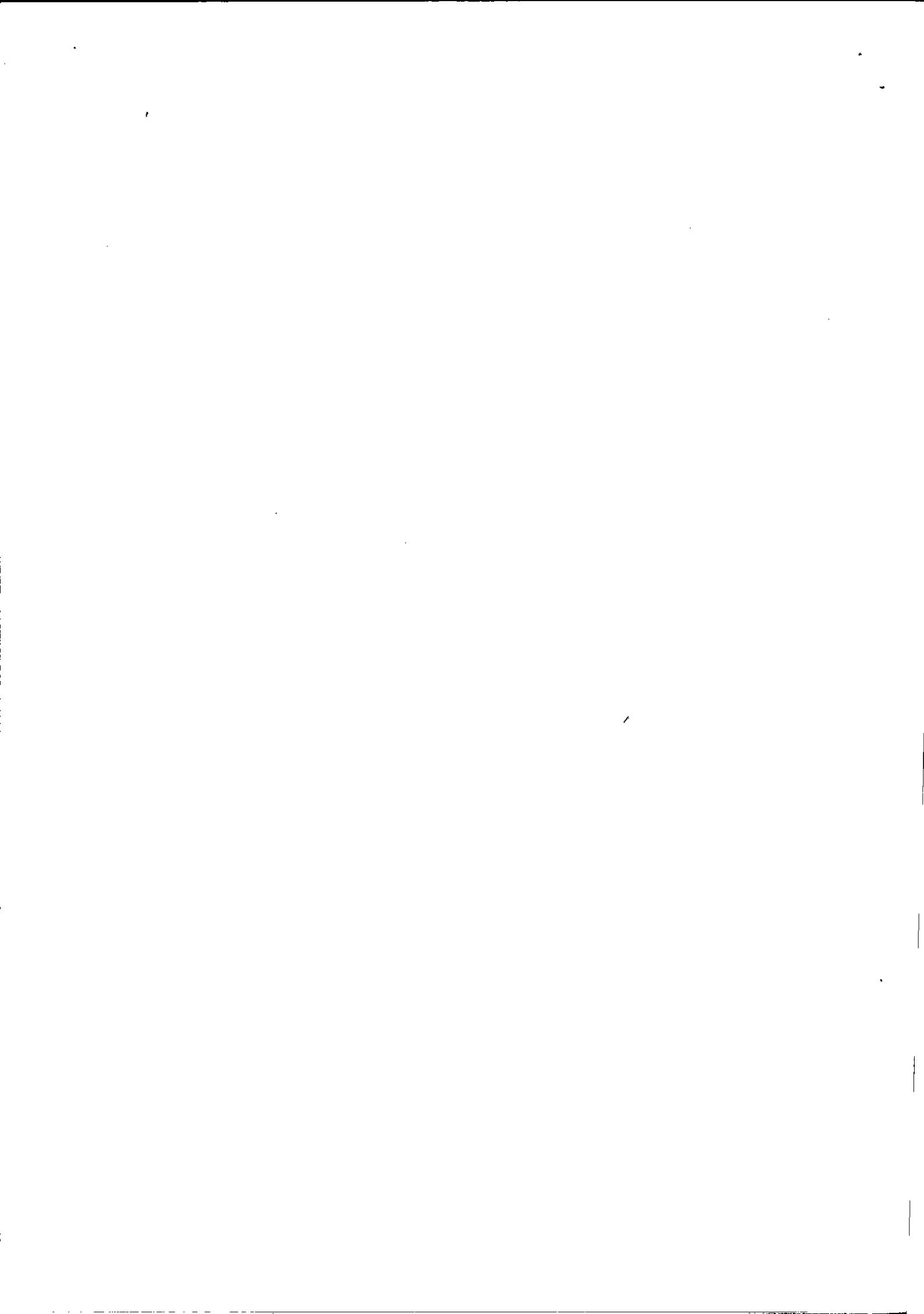
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Subject :-Mis-declaration of goods in Shipping Bill No. 7221002 Dt. 02.02.2024, 9068800 Dt. 12.04.2024 & 9376879 Dt. 25.04.2024 filed by M/s. Gandhi Enterprise.-Reg.

BRIEF FACTS OF THE CASE:

Whereas it appeared that the exporter M/s. Gandhi Enterprise (having IEC: 1308004290), E-49 RICO Industrial Area, Phalodi- 342301, Jodhpur, Rajasthan filed Shipping Bills no. 7221002 dt. 02.02.2024 and 9068800 dt. 12.04.2024 through their Custom Broker M/s. Westwind Shipping and Logistics Pvt. Ltd for exportation of STRYCHNI SEMEN (KUCHLA) and Shipping Bill no. 9376879 dt. 25.04.2024 through their Custom Broker M/s. Saanch Logistics for exportation of STRYCHNI SPP by classifying them under CTH 12119090. The details of said consignment of exports are as under:-

Sl.	SB No. and Date	Name of Exporter	CHA Name	RTIC Code	Description of Goods	Wt (in Kgs)	FOB Value (In Rs.)
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1	7221002 Dt. 02.02.2024	Gandhi Enterprise	Westwind Shipping and Logistics Pvt. Ltd.	12119090	STRYCHNI SEmen (KUCHLA)	28000	40,50,158/
2	9068800 Dt. 12.04.2024	Gandhi Enterprise	Westwind Shipping and Logistics Pvt. Ltd.	12119090	STRYCHNI SEmen (KUCHLA)	28000	45,34,740/
3	9376879 Dt. 25.04.2024	Gandhi Enterprise	Saanch Logistics	12119090	STRYCHNOS SPP (Packing in Jute Bag)	28000	40,74,459/

2. The detailed examination of goods covered under Shipping Bills no. 9068800 dt. 12.04.2024 and 9376879 dt. 25.04.2024 was carried out by Docks officers in the presence of authorized representative of concerned Custom Broker.

2.1 The details of Examination report of goods covered under shipping bill No. **9068800 dated 12.04.2024** are as under:-

M/s. Gandhi Enterprises, having IEC No. 1308004290 filed a Shipping bill No. 9068800 dated 12.04.2024 for export of the goods described as "Strychnos Semen (Kuchla)" (hereinafter referred to as the subject goods) under CTH 12119090 to the Country 'China'. The Shipping Bill was pending in assessment Section. The subject goods were opened and examined as per norms prescribed.

The goods filed under Shipping Bill no. 9068800 dated 12.04.2024 examined 100% on 10.05.2024. On visual examination, the cargo found in Jute bags 50 Kgs approx. (Total 560 Jute Bags). No marks, nos., quantity, Country of origin, or any other description mentioned on the PP bags. On visual examination, the cargo appears as Strychnos Seeds (images of cargo enclosed herewith for reference). The examination carried out under Supervision of Supdt(DE) and in the presence of Custom Broker Representative.

2.2 The details of Examination report of goods covered under shipping bill No. **9376879 dated 25.04.2024** are as under:-

M/s. Gandhi Enterprises, having IEC No. 1308004290 filed a Shipping bill No. 9376879 dated 25.04.2024 for export of the goods described as "Strychnos SSP" (hereinafter referred to as the subject goods) under CTH 12119090 to the Country 'China'. The Shipping Bill was assessed through RMS. The subject goods were opened and examined as per norms prescribed.

The goods filed under Shipping Bill no. 9376879 dated 25.04.2024 examined 100% on 10.05.2024. On visual examination, the cargo found in PP woven bags (not in jute bags as declared in SB) 50 Kgs approx. (Total 560 PP Bags). No marks, nos., quantity, Country of origin, or any other description



mentioned on the PP bags. On visual examination, the cargo appears as Strychnos Seeds (images of cargo enclosed herewith for reference). The examination carried out under Supervision of Supdt(DE) and in the presence of Custom Broker Representative.

Based on the examination report and purchase invoice submitted by exporter, it is observed that goods described as STRYCHNI SEMEN (KUCHLA) & STRYCHNI SPP are seeds of Nux Vomica. Exporter has classified said goods under CTH 12119090. However, pursuant to the outcome of the examination report carried out by docks officers and submission of documents by exporter, the goods are rightly classifiable under CTH 12119012 and restricted for export and shall be allowed under valid license issued by DGFT and also shall be regulated according to the rules notified under Biological (Diversity) Act, 2002.

3. Relevant part of Export Policy- Schedule 2 of Chapter 12 of Customs Tariff are as under:-

Seeds of all forestry species including Nux Vomica , Red Sanders , Rubber, Russa Grass and tufts, Sandalwood and seeds of tufts , Sandalwood and seeds of ornamental wild variety plants stand restricted for export and shall be allowed under license and also shall be regulated according to the rules notified under Biological (Diversity) Act, 2002.

3.1 Relevant part of Rule 14 notified under Biological (Diversity) Act, 2002 are as under:-

Rule 14. Procedure for access to biological resources and associated traditional knowledge

(1) Any person seeking approval of the Authority for access to biological resources and associated knowledge for research or for commercial utilization shall make an application in Form I.

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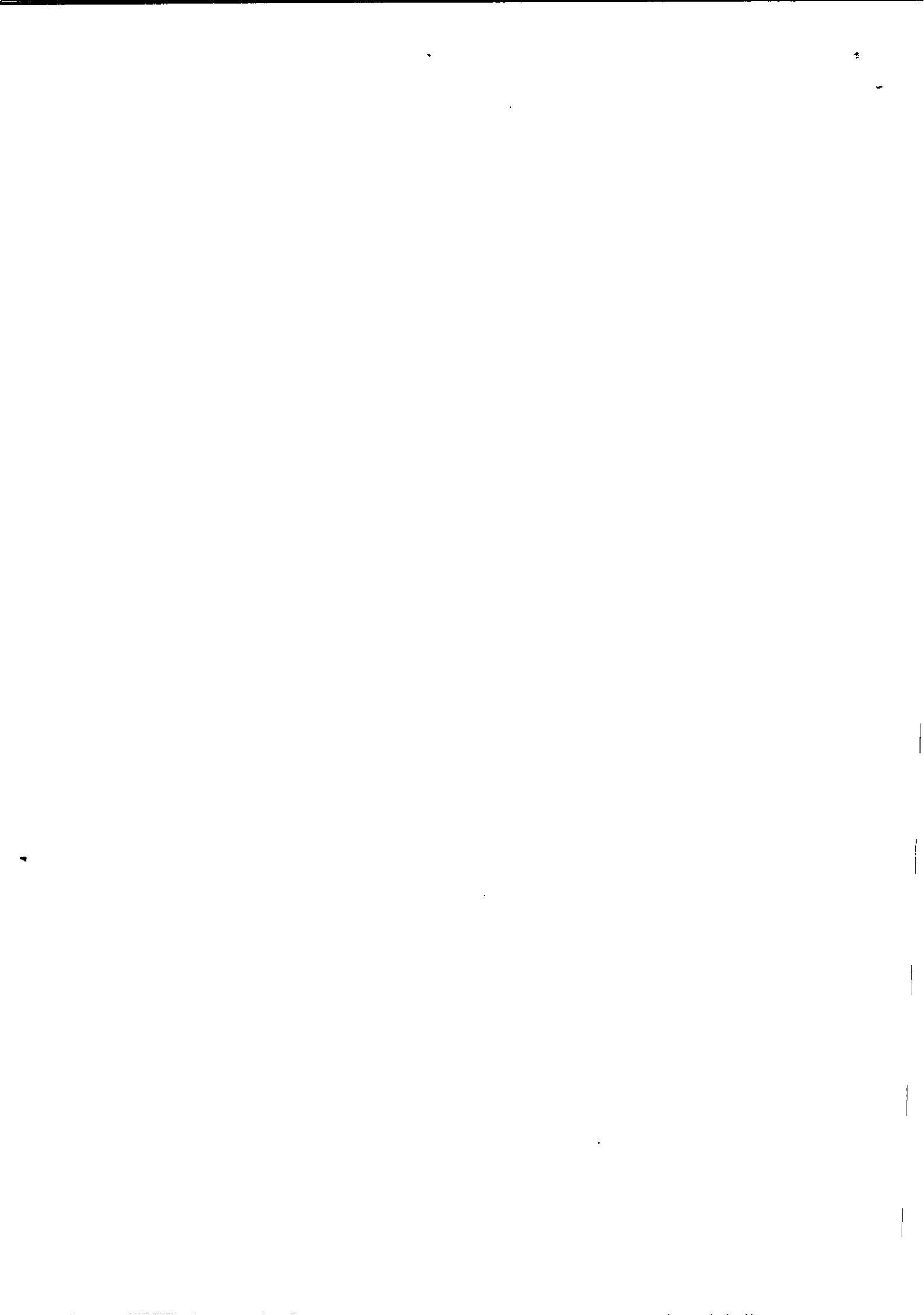
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(4) On being satisfied with the merit of the application, the Authority may grant the approval for access to biological resources and associated knowledge subject to such term and conditions as it may deem fit to impose

4. It is observed that impugned goods i.e. Seeds of Nux Vomica are restricted for exportation and shall be allowed under license and also shall be regulated according to the rules notified under Biological (Diversity) Act, 2002. The exporter has not produced any license issued by Competent Authority/DGFT for exportation of Restricted goods

5. Relevant Legal Provisions:

5.1. Section 2(19) defined the terms "Exported Goods":



"export goods means any goods which are to be taken out of India to a place outside India"

5.2. Section 50 :Entry of goods for exportation. —

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed.

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically on the customs automated system, allow an entry to be presented in any other manner.

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall make and subscribe to a declaration as to the truth of its contents.

(3) The exporter who presents a shipping bill or bill of export under this section 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. ”.*

5.3. 113. Confiscation of goods attempted to be improperly exported, etc.—

The following export goods shall be liable to confiscation:—

a.

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(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

5.4. 114. Penalty for attempt to export goods improperly, etc.—

Any person 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 113, or abets the doing or omission of such an act, 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 three times the value of the goods as declared by the exporter or the value as determined under this Act, 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: Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

iii. *in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.*

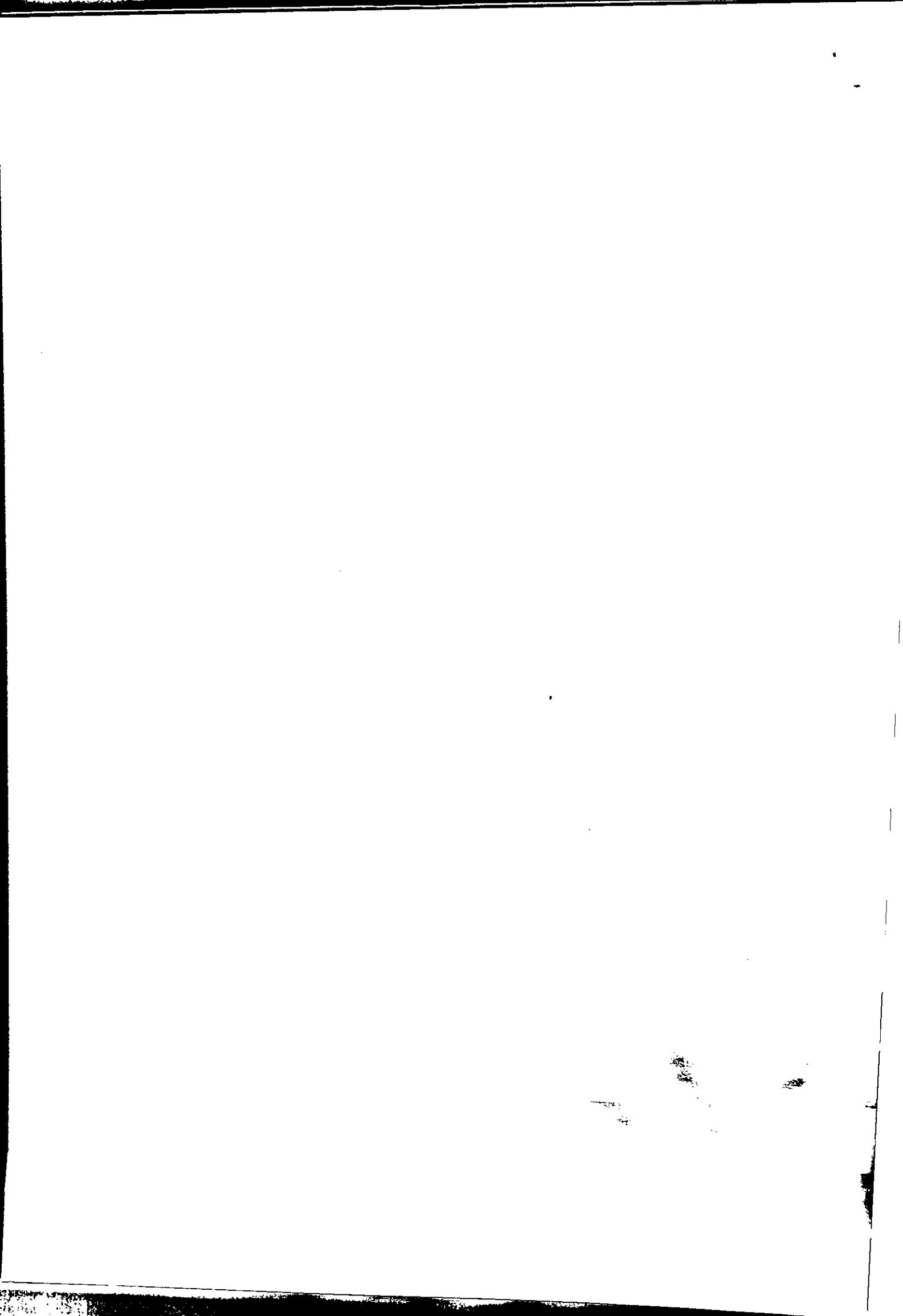
It is observed that M/s. Gandhi Enterprise has exported the restricted goods i.e. Seeds of Nux Vomica vide Shipping Bill no. 7221002 dated 02.02.2024 having total FOB value of Rs. 40,50,158/- and attempted to export the said impugned goods vide Shipping Bills no. 9068800 dt. 12.04.2024 having FOB value of Rs. 45,34,740/- & 9376879 dt. 25.04.2024 having FOB value of Rs. 40,74,459/- without having a License/Export Authorization issued by DGFT. In the Purchase Invoices submitted by exporter, goods were declared as Seeds of Nux Vomica but exporter mentioned Scientific name Strychni Semen (Kuchla) & Strychnos SPP as description of the goods in Export Invoice by disguising name of Seeds of Nux Vomica. For this act or omission exporter makes the goods liable for confiscation under Section 113 (d) of Customs Act, 1962. Further, for this act of omission and commission, Exporter M/s. Gandhi Enterprise appeared to have rendered themselves liable for penalty under Section 114(i) of the Customs Act, 1962.

6. Submissions for PH and SCN made by Exporter and Customs Brokers:

6.1. The Exporter has submitted letter dated 17.05.2024 & 22.05.2024 for waiver of SCN and PH for SB no. 9068800 dt. 12.04.2024 & 9376879 Dt. 25.04.2024. Further the exporter requested to allow the goods back to town and decide the case on merits.

6.2. Custom Broker M/s. Westwind Shipping and Logistics Pvt Ltd vide letter 10.06.2024 submitted that they filed the Shipping Bill no. 9068800 dated 12.04.2024 as per export invoice/packing list provided by Exporter under CTH 12119090. The said CTH in the documents falls under 'Others' category as per Customs Tariff. Customs officials raised a query regarding Tax Invoice. Consequently, they requested the shipper to provide the tax invoice, which was subsequently uploaded in e-sanchit on 24.04.2024. They don't want any Personal Hearing and Show Cause Notice in instant matter.

6.3. Another Custom Broker M/s. Saanch Logistics vide letter dated 10.06.2024 submitted that M/s. Gandhi Enterprise had given document of their export shipment for exporting Strychnos SPP. They tried to find the CTH for said goods in Customs Tariff but it was not mentioned in Customs Tariff and they asked for previous shipping bill from exporter, for which they had provided Shipping Bill no. 7221002 dated 02.02.2024 and also told that it is same commodity and it is not mentioned in Tariff and classified in 'Other' category. After carting of goods they got the goods examined by Docks officer and they have complete KYC of exporter and have got the cargo examined as per rules.



They have not tried to suppress any information or have done any concealment of cargo. They don't want any SCN and PH in said matter and requested to decide the matter on merits.

DISCUSSION AND FINDINGS:

7. I have carefully gone through the facts available on the records and submissions made by exporter & Customs Brokers. The exporter vide their letter dated 17.05.2024 & 22.05.2024 have asked for waiver of Show Cause Notice and personal hearing and requested to decide the matter on merit. Custom Broker M/s. Westwind Shipping and Logistics Pvt Ltd and M/s. Saanch Logistics submitted that they filed the Shipping Bills based on the export documents provided by exporter and they don't want any SCN & Personal Hearing in the said matter and have done all obligations as a Custom Broker. Thus, I find that the principles of natural justice as provided in Section 122A of the Customs Act 1962 has been complied with and therefore, I proceed to decide the case on the basis of the documentary evidence available on records.

8. I find that the following issues are required to be decided in the instant case:-

(i) The classification of the goods covered under Shipping Bill No. 7221002 Dt. 02.02.2024, 9068800 Dt. 12.04.2024 & 9376879 Dt. 25.04.2024 should not be rejected and re-classified the same under CTH-12119012.

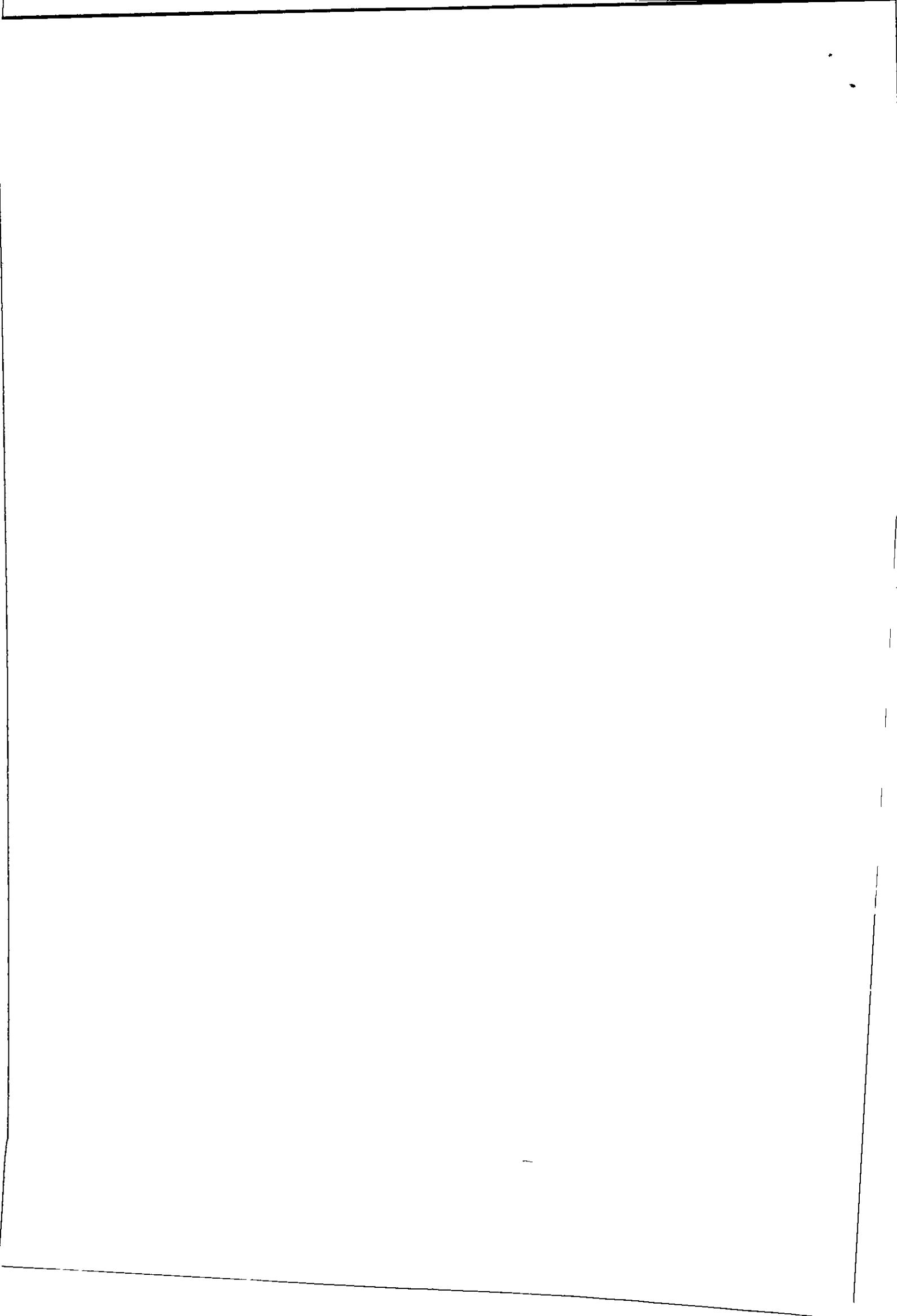
(ii) The goods covered under Shipping Bill No. 7221002 Dt. 02.02.2024, 9068800 Dt. 12.04.2024 & 9376879 Dt. 25.04.2024 should not be confiscated under Section 113 (d) of the Customs Act, 1962.

(iii) The penalty under Section 114 (i) of the Customs Act, 1962 should not be imposed upon the Exporter;

9. Now, I proceed to decide the case issue-wise.

9.1. I find that the exporter classified the impugned goods covered under all 03 shipping bill under **CTH-12119090**. However, pursuant to the outcome examination report submitted by Docks Officer and purchase Invoice provided by exporter, the goods '**Seeds of Nux Vomica**' exported vide shipping bill no. 7221002 dt. 02.02.2024 and said goods attempted for export vide shipping bill no. 9068800 dt. 12.04.2024 & 9376879 dt. 25.04.2024 are rightly classifiable under **CTH-12119012** and therefore the same are required to be re-classified under **CTH-12119012**.

9.2. I find that as per Export Policy- Schedule 2 of Chapter 12 of Customs Tariff Seeds of all forestry species including Nux Vomica, Red Sanders, Rubber, Russa Grass and tufts, Sandalwood and seeds of tufts, Sandalwood and seeds of ornamental wild variety plants stand restricted for export and shall be allowed under licence and also shall be regulated according to the rules notified under Biological (Diversity) Act,



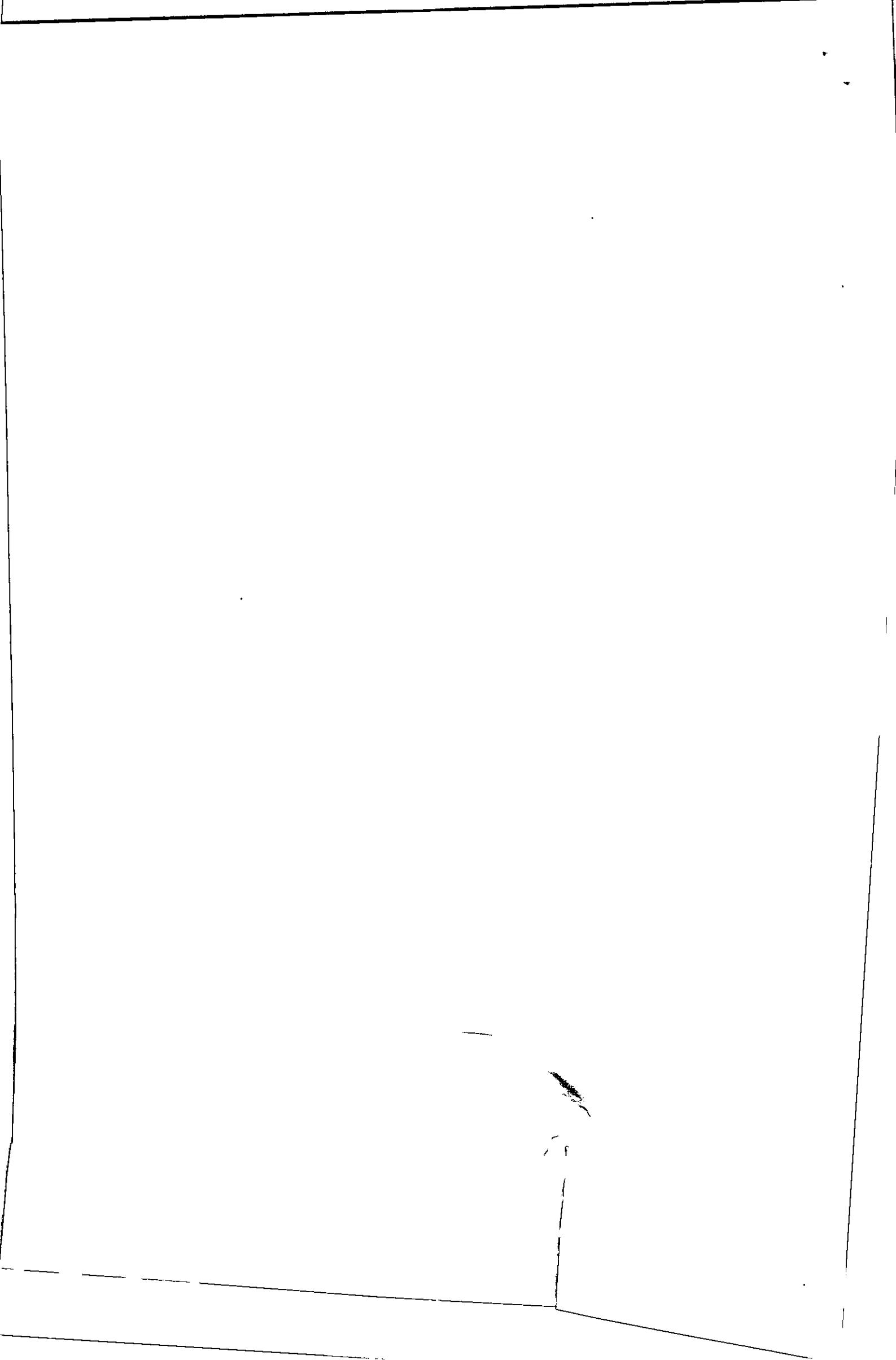
2002. Hence, it is observed that seeds of Nux Vomica are restricted for exportation and shall be allowed under license and also shall be regulated according to the rules notified under Biological (Diversity) Act, 2002. But, M/s. Gandhi Enterprise has exported the restricted goods i.e. Seeds of Nux Vomica vide Shipping Bill no. 7221002 dated 02.02.2024 and attempted to export the said goods vide Shipping Bills no. 9068800 dt. 12.04.2024 & 9376879 dt. 25.04.2024 without having a License/Export Authorization issued by DGFT. In the Purchase Invoice, goods were declared as Seeds of Nux Vomica but exporter mentioned Strychni Semen (Kuchla) & Strychni SPP as description of the goods in Export Invoice by disguising name of Seeds of Nux Vomica. The exporter has also mis-classified the goods under CTH 12119090 instead of right classification under CTH 12119012. For this act or omissions exporter makes the goods liable for confiscation under Section 113 (d) of Customs Act, 1962. Therefore, for this act of omission and commission, Exporter M/s. Gandhi Enterprise have rendered themselves liable for penalty under Section 114(i) of the Customs Act, 1962.

9.3. I find that conduct of Custom Brokers M/s. Saanch Logistics and M/s. Westwind Shipping and Logistics Pvt Ltd in the present case does not indicate that they had acted deliberately in defiance of law or acted in conscious disregard of their obligation. Therefore, the penalty under Section 114(i) of the Custom Act, 1962 is not required to be imposed on the Customs Brokers. Any malafide intention is not noticed the penalty should have been nominal, only to ensure that legal provisions were not ignored even by mistake. Therefore, penalty under Section 117 of the Customs Act, 1962 is required to be imposed upon them.

10. In view of the forgoing discussions and findings, I pass the following order:

ORDER

- (i) I order to re-classify goods seeds of Nux-Vomica under CTH-12119012 covered in Shipping Bill Nos. 7221002 Dt. 02.02.2024, 9068800 Dt. 12.04.2024 & 9376879 Dt. 25.04.2024;
- (ii) I order confiscation of the goods having FOB value of **Rs. 86,09,199/-** covered under Shipping Bill Nos. 9068800 Dt. 12.04.2024 & 9376879 Dt. 25.04.2024 under Section 113(d) of the Customs Act, 1962. However, I give an option to the exporter to redeem the confiscated goods declared in above Shipping Bills on payment of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) for Back to Town purpose. However, the goods covered under shipping bill no. 7221002 dt. 02.02.2024 are already exported and are not physically available. I refrain from imposing redemption fine on said goods.
- (iii) I impose penalty of Rs. 7,00,000/- (Rupees Seven Lakhs Only) upon exporter in respect of Shipping Bill No. 7221002 Dt. 02.02.2024, 9068800 Dt. 12.04.2024 & 9376879 Dt. 25.04.2024 under Section 114



(i) of the Customs Act, 1962;

(iv) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh only) upon M/s. Saanch Logistics, Custom Broker, under section 117 of the Customs Act, 1962.

(v) I impose a penalty of Rs. 1,00,000/- (Rupees One Lakh Only) upon M/s. Westwind Shipping and Logistics Pvt. Ltd, Custom Broker, under section 117 of the Customs Act, 1962.

11. This order is issued without prejudice to any other action that may be contemplated against the exporter or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
 Mukesh Kumar (Signature)
 Additional Commissioner (Export)
 Customs House, Mundra

F.No.CUS/ASS/MISC/487/2024-EA

Date: 25-06-2024

BY SPEED POST

To,

1. M/s. Gandhi Enterprise,
E-49 RICO Industrial Area,
Phalodi- 342301, Jodhpur, Rajasthan.
2. M/s. Saanch logistics ,
Office no 206, 2nd Floor, Golden Heights,
Plot no 12, Sector 8, Near BM Petrol Pump,
Gandhidham, Kutch, 370201.
3. M/s. Westwind Shipping and Logistics Pvt. Ltd (AAACW7386GCH001).
A-1007-1008, Titanium Square, Thaltej Cross Road,
Ahmedabad, 380054.

Copy to:- (1) The Deputy Commissioner (RRA)/ TRC/ EDI Section/CB Section.

