



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE MUNDRA, 5-B, PORT USER BUILDING (PUB),
AP & SEZ, PORT ROAD, MUNDRA PORT, MUNDRA-370421**

A	File No.:	CUS/APR/BE/MISC/399/2023-Gr 1
B	Order-in-Original No.:	MCH/19/ADC/MK/2023-24
C	Passed by:	Smt. Mukesh Kumari Additional Commissioner of Customs, Custom House, AP & SEZ, Mundra
D	Date of order:	28.04.2023
E	Date of issue:	02.05.2023
F	Importer:	M/s A & A Shipping Services (IEC: EKYP8189E) Second Floor, Flat No. 204, Rajkamal Infraprojects Pvt Ltd, Plot No. 09 & 10, Ward No. 09, Gandhidham-370201
G	SCN No. & Date	Importer waived SCN vide letter dated 31.03.2023
H	DIN	20230571MO000041414C

1. This copy is granted free of charge for the use of person to whom it is issued.
2. An appeal against this order lies with the **COMMISSIONER OF CUSTOMS (APPEAL), MUNDRA**, having office at **7th floor, Mridul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380009** in terms of Section 128 of the Customs Act, 1962. it should be filed within sixty days from the date of communication of this order.
3. Appeal should be filed in format prescribed. It shall be signed by the person specified in sub-rule (2) of Rule 3 of the Customs Appeal Rules, 1982. It shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be certified copy). All supporting documents of the appeal should be forwarded in quadruplicate. The appeal shall be presented in person to the office of the Commissioner (Appeal), Ahmedabad, but the date of receipt in the office will be relevant date of appeal whether in time or not.
4. The copy of this order attached herein should bear a Court fee stamp of Re.1/- (Rupee one only) as prescribed under schedule-1, item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty/penalty should also be attached to the original appeal.
6. Appeal should also bear a Court Fee Stamp of Rs. 5/-.
7. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

Sub.: Import of “Fresh Kiwi Fruits” by M/s A & A Shipping Services (IEC: EKYP8189E) - reg.

I/1157544/2023

Brief facts of the Case

M/s. A & A Shipping Services (IEC: EKYPS8189E) (hereinafter referred to as “said importer” for sake of brevity) having its registered office at Second Floor, Flat no. 204, Rajkamal Infraprojects Pvt. Ltd., Plot No. 9, 10, Ward No. 9/AE, Gandhidham – 370201, filed the following Bill of entry for import of Fresh Kiwi Fruits at Adani ports and SEZ:

TABLE - A

Sr. No.	Bill of entry No. & Date	IGM No. & date	Declared Country of Origin	Container No.	CFS	Value of goods in (₹)	Consigned to SEZ Unit
1.	Not filed	2329071 dt.08-12-22	Chile	GESU9272180, TLNU1001073	M/s. Saurashtra CFS, Mundra Port	59,42,640/-	M/s. Empezar Logistics Pvt. Ltd.
		2329736 dt. 15-12-22		GESU9206316, PRGU5089440			
2.	Not filed	2328850 dt. 05-12-22	Chile	EMKU9201419, EMKU9201466, RFTU5650780, RRSU9128689, TEMU9036381	M/s. Ashutosh CFS, Mundra Port	45,85,737/-	
Total Value						₹ 1,05,28,377/-	

2. Country of Origin of the above mentioned goods has been declared as ‘Chile’. Intelligence suggested the said goods to be of Iranian origin. Import of Iranian origin kiwi has been suspended by the nodal body National Plant Protection Organization (NPPO) under Ministry of Agriculture vide No. 18-23/2015.PP.II (e-16587) dated 07.12.2021.

3. Based on the specific intelligence, the said consignments lying the Mundra Port terminal had been taken on hold by Special Intelligence and Investigation Branch, Mundra (hereinafter referred to as “SIIB”) for detailed examination. Since, the Bills of Entry for the said consignments were not filed and the goods getting no claimant, the containers declared to be laden with Fresh Kiwi Fruits were shifted to designated CFSs viz. Saurashtra CFS and Ashutosh CFS.

4 . Examination of the said consignment was done by officers of Adani Port and SEZ. As per the examination report submitted by APSEZ, the goods were found as declared. All the consignments were consigned to

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M/s. A & A Shipping Services Second Floor, Flat no. 204, Rajkamal Infraprojects Pvt. Ltd., Plot No. 9, 10, Ward No. 9/AE, Gandhidham – 370201.

5. The representative of the importer was asked to produce all the documents in relation to all the consignments. Representative of the importer submitted all the documents physically. Details of documents submitted by the importer is as under:

TABLE - B

Sr. No.	IGM No. & date	Container Nos.	Dubai Phytosanitary Certificate No.	Corresponding Chile Phytosanitary Certificate No. declared
1.	2329071 dt.08-12-22	EMKU9201419 EMKU9201466 RFTU5650780 RRSU9128689 TEMU9036381	SHJ-APH-02415- 2151770 219- 1494 dated 09-12-2022	1. 2166630 dated 09-05-2022 2. 2178021 dated 31-05-2022 3. 2171104 dated 17-05-2022 4. 2178019 dated 31-05-2022 5. 2171102 dated 17-05-2022
2.	2329736 dt.15-12-22	GESU9272180, TLNU1001073,	SHJ-APH-02415- 2144070 218- 8426	1. 2167596 dated 11-05-2022
3.	2328850 dt.05-12-22	GESU9206316, PRGU5089440	dated 30-11-2022	2. 2171710 dated 18-05-2022 3. 2171104 dated 17-05-2022 4. 2166631 dated 09-05-2022

6. The quantity mentioned in the Phytosanitary Certificates issued both by Dubai as well Chile may be glanced upon. Details thereof are listed hereafter Tables `C' and `D'.

TABLE - C

Phytosanitary Certificate No. & date issued by Dubai (UAE)	Quantity mentioned in the Phytosanitary Certificate	Container no. mentioned in the phyto issued by Dubai (UAE)	Date of issue	Name of Consignee mentioned in the Phyto

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SHJ-APH-02415-2151770 219-1494 Dated 09-12-2022	120000 Kgs.	EMKU9201419, EMKU9201466, RFTU5650780, RRSU9128689, TEMU9036381	09-12-2022	M/s. Anchor Global Foodstuff LLC, UAE
SHJ-APH-02415-2144070 218-8426 Dated 30-11-2022	92600 Kgs.	GESU9272180, TLNU1001073, GESU9206316, PRGU5089440	30-11-2022	M/s. Anchor Global Foodstuff LLC, UAE

TABLE - D

Phytosanitary Certificate issued by Chile		Container no. mentioned in the phyto issued by Chile	Name of Consignee mentioned in the phyto
No. & date	Quantity (in kgs.)		
2166630 dt. 09-05-2022	24000	SEGU9202249	M/s. Anchor Global Foodstuff LLC, UAE
2178021 dt. 31-05-2022	24000	CRLU1326939	
2171104 dt. 17-05-2022	24000	TRIU8915640	
2178019 dt. 31-05-2022	24000	MEDU9779717	
2171102 dt. 17-05-2022	24000	TRIU8272348	
TOTAL	1,20,000		
2167596 dt. 11-05-2022	24000	CRLU7203206	
2171710 dt. 18-05-2022	24000	MEDU9061782	
2171104 dt. 17-05-2022	24000	TRIU8915640	
2166631 dt. 09-05-2022	24000	GESU9547138	
TOTAL	96,000		

7. On perusal of investigation proceedings being handled by other Investigation Officers of the SIIB Section, Customs, Custom House, Mundra it has been uncovered that the same Phytosanitary Certificates issued by Chile have been used by the Importer in several other consignments under investigations. It appears that the Importer had intentions to mislead/deceive the department in its attempt to import banned substances/goods for consumption of the citizen.

TABLE - E

Bill of Entry No/Date	Phytosanitary Certificate issued by Dubai (UAE)	Phytosanitary Certificate issued by Chile
3989898 dt. 01-12-2022	DXB-APH-02415-2122091 dt. 29-11-2022	2166630 dt. 09-05-2022
		2178021 dt. 31-05-2022
		2171104 dt. 17-05-2022
		2178019 dt. 31-05-2022

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4026695 dt. 04-01-2023	DXB-APH-02415-2123743 dt. 08-12-2022	2166631 dt. 09-05-2023 2171102 dt. 17-05-2022
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8. Attention may be drawn to Tables 'D' and 'E' above. It had been unearthed while perusing the investigation proceedings that the below mentioned Phytosanitary Certificates issued by Country of Chile and submitted by the Importer for evidencing the Country of Origin in the case of imports under IGM Nos. 2329071 dated 08-12-2022, 2329736 dated 15-12-2022 and 2328850 dated 05-12-2022 had earlier been denoted as an evidence for imports of Fresh Kiwi Fruits by M/s Alphabet International (IEC-DYGPG2869N) 3, Pocket-D-2, Sector-11, Rohini, North West Delhi, Delhi under Bills of Entry Nos. 3989898 dated 01-12-2022 and 4026695 dated 04-01-2023, the same Phytosanitary Certificates as under:

- i. 2166630 dt. 09-05-2022
- ii. 2178021 dt. 31-05-2022
- iii. 2171104 dt. 17-05-2022
- iv. 2178019 dt. 31-05-2022
- v. 2166631 dt. 09-05-2023
- vi. 2171102 dt. 17-05-2022

9. It appears that initially the Phytosanitary Certificates had been denoted as evidence of Country of Origin for imports narrated in TABLE – E and subsequently used it for imports narrated in TABLE – B. It can also be not ruled out that the same certificate might not have been utilised by the Importer or the Supplier of goods for fabricating the Country of Origin in an attempt to import goods of Iranian Origin.

10. In view of above, it appears that the importer tried to import Fresh Kiwi by mis-declaring the origin and submitting Phytosanitary Certificates which are being used by two different importers for quantity which is more than that of original imports from Chile which is impossible to corroborate at this moment looking into the quantum of fraudulent import attempts by various Importer in India utilising the same set of documents viz. Phytosanitary Certificates issued by Chile. Thus, it appears that goods were imported by manipulating the relevant documents i.e. Phytosanitary Certificates to show the origin of goods as Chile, therefore, the same appears to be liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Further, rendering the goods liable for confiscation importer appears to be liable for penal action under Section 112(a)(i) and 114AA of the Customs Act, 1962.

11. LEGAL PROVISIONS APPLICABLE IN THE CASE:

Following provisions of law are applicable in the present case:

SECTION 2. Definitions. -

(3A) "beneficial owner" means any person on whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

SECTION 46(4) OF THE CUSTOMS ACT, 1962:

(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.

SECTION 111 (d) & (m) OF THE CUSTOMS ACT, 1962:

111. Confiscation of improperly imported goods etc.

The following goods brought from the place outside India shall be liable to confiscation:

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water 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];

SECTION 112(a) OF THE CUSTOMS ACT, 1962:

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, 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;

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.

SHOW CUASE NOTICE AND PERSONAL HEARING

12. The importer M/s. A & A Shipping Services submitted a letter dated 31.03.2023 and requested to allow re-export of the goods imported under IGM Nos. 2329071 dated 08.12.2022, 2329736 dated 15.12.2022 and 2328850 dated 05.12.2022 to third country as they do not have any buyer in UAE. The importer also submitted that they don't want any Personal Hearing and Show Cause Notice in this matter.

DISCUSSION AND FINDING

13.1 I have carefully gone through the case records, Investigation Report dated 26.03.2023 received from Investigation Agency (SIIB) and applicable provisions of law. Importer vide letter dated 31.03.2023 has requested to allow re-export of the consignments (mentioned in Table-A) to a third country. The importer submitted that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of principle of natural justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

13.2 I find that import of Iranian origin Kiwi has been suspended by the nodal body National Plant Protection Organization (NPPO) under Ministry of Agriculture, Government of India vide No. 18-23/2015.PP.II (e-16587) dated 07.12.2021. As per General Condition for Import No. 3 of the Plant Quarantine (Regulation of Import into India) Order, 2003, no plants, plant products and other regulated articles shall be imported into India without complying the phytosanitary conditions stipulated under the said order. Further, Clause 7(i) of the said condition provides provision for suspension of further import of consignments until earlier Pest Risk Analysis (PRA) in

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respect of the consignment is reviewed and the risk mitigating measures are evaluated.

13.3 I find that Phytosanitary Certificate Nos. 2166630 dated 09.05.2022, 2178021 dated 31.05.2022, 2171104 dated 17.05.2022, 2178019 dated 31.05.2022, 2166631 dated 09.05.2023 and 2171102 dated 17.05.2022 had earlier been denoted as an evidence for imports of Fresh Kiwi Fruits by M/s Alphabet International (IEC-DYGPG2869N) 3, Pocket-D-2, Sector-11, Rohini, North West Delhi, Delhi under Bills of Entry Nos. 3989898 dated 01-12-2022 and 4026695 dated 04-01-2023. Thus, the aforesaid Phytosanitary Certificate are being used by two importers (as mentioned in the Table – D & E) to show the goods are of Chile Origin, which is not proper. I therefore find that importers are using forged documents to show the cargo as Chile Origin.

13.4 I find that two importers are using same Phytosanitary Certificates for import of Fresh Kiwi Fruits of Chile origin. From the above mentioned investigation it is amply clear that Country of Origin of the subject consignments have been mis-declared by producing bogus/ forged documents. The suspension of imports of Kiwi from Iran under the provisions of the Plant Quarantine (Regulation of Import into India) Order, 2003 amounts to prohibition in view of definition of 'Prohibited Goods' provided in Section 2(33) of the Customs Act, 1962.

13.5 The importer has waived issuance of Show Cause Notice and Personal Hearing. The importer has not submitted any argument/ contention against the above mentioned facts and evidences.

13.6 In view of above facts and evidences, I find that the subject consignments are originated in Iran and in order to circumvent the prohibition bogus documents were produced before Customs Authorities and the Country of Origin was mis-declared. This act has rendered the subject goods liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

13.7 In view of the above, the acts of omission and commission of the importer has rendered the goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 and thereby rendering the importer liable for penalty under Section 112(a)(i) of the Customs Act,

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1962

13.8 In view of the investigation and as discussed in para supra, I find that these documents are evidently bogus. Hence, by intentionally making false and incorrect documents for attempting clearance of import consignments, the importer has also rendered them liable for penal action under Section 114AA *ibid*.

13.9 As discussed above, since the subject goods have been found to be prohibited and liable for confiscation, I find it appropriate to allow re-export of the goods subject to redemption under section 125 of the Customs Act, 1962. Section 125 of the Customs Act, 1962 provides that whenever confiscation of any goods is authorized by the Customs Act, 1962, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. However, in this case redemption is being allowed only for re-export and thus, there will be no margin of profit. Quantum of redemption fine is being decided considering this fact.

14. In view of the aforesaid discussions and findings, I pass the following order:

ORDER

14.1 I order for confiscation of the goods imported under IGM Nos. 2329071 dated 08.12.2022, 2329736 dated 15.12.2022 and 2328850 dated 05.12.2022 having assessable value of **Rs. 1,05,28,377/-** (Rupees One Crore Five Lakhs Twenty Eight Thousand Three Hundred Seventy Seven only) under Section 111(d) and 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the confiscated goods on payment of redemption fine of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** under Section 125 of the Customs Act, 1962 for re-export purpose only. However, if importer don't submit any documents/willingness to send back/export the impugned goods within 30 days from the receipt of this order, the said impugned goods i.e. Fresh Kiwi Fruits would be liable for destruction as per instructions and guidelines in CBIC disposal manual,

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2019. The cost of destruction shall be borne by the importer.

14.2 I impose a penalty of Rs. **5,00,000/- (Rupees Five Lakhs Only)** on the importer M/s. A & A Shipping Services (IEC: EKYPS8189E) under Section 112(a)(i) of the Customs Act, 1962.

14.3 I also impose a penalty of Rs. **8,00,000/- (Rupees Eight Lakhs Only)** on the importer M/s A & A Shipping Services under Section 114AA of the Customs Act, 1962.

14.4 I also permit to re-export of the goods on payment of redemption fine and penalty and other charges as applicable as ordered above.

15. 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.

1 6 . The Investigation Report issued vide F.No. S/43-298/A & A Shipping/SIIB-E/CHM/22-23 dated 26.03.2023 by Deputy Commissioner, SIIB, CH Mundra is hereby disposed off.

Signed by Mukesh Kumari
Date: 28-04-2023 19:13:00

(Mukesh Kumari)
Additional Commissioner
Import Section, CH Mundra

F.No. CUS/APR/BE/MISC/399/2023-Gr 1 Date:28-04-2023

To,

M/s A & A Shipping Services
(IEC: EKYPS8189E)
Second Floor, Flat No. 204, Rajkamal Infraprojects Pvt Ltd,
Plot No. 09 & 10, Ward No. 09, Gandhidham-370201

Copy to:-

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.

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3. The Deputy Commissioner of Customs (SIIB), Custom House, Mundra.
4. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
5. Guard File.