

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467
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DIN- 20250371ML0000999B7A

A	File No.	GEN/ADJ/ADC/2124/2023-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/RKJ/33/2024-25
C	Passed by	Rakesh Kumar Jain, Additional Commissioner of Customs, Custom House, Kandla
D	Date of Order	28.03.2025
E	Date of Issue	28.03.2025
F	SCN No. & Date	CUS/SIIB/HOC/ 28/ 2022-SIIB-O/o-Commr-Cus-Kandla-Part(1) dated 17.05.2023
G	Noticee / Party / Importer / Exporter	M/s. Speedex Corporation

1. यह मूल 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 मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A 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:

“ सीमाशुल्क आयुक्त (अपील),

7 वीं मंजिल, मृदुलटावर, 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-380009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्यप्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद्दसं-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.

6. अपील ज्ञापन के साथ ब्लूटि/ व्याज/ 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.

7. 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.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्कया 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. Speedex Corporation situated at Beside Neelkanth Hotel, Plot no.34/3,Sikka Patiya Road, Moti Khavdi, Jamnagar, IEC - 2413014187 and PAN No.: ACDFS7838MFT001 (hereinafter referred to as 'the Importer'), has filed a Bill Of Entry No. 3044795 dtd. 27.10.2022 through their Customs Broker, M/ s Ribhus International Private Limited at Kandla port for clearance of import goods i.e. "Kiwi Fruit". The detail of bill of entry is as below:

(Table-A)

Sr. No.	Bill of Entry and Date	Description of Goods	Declared Value of the goods
01	3044795 dtd. 27.10.2022	Kiwi Fruit(CETH-08105000)	8,34,863.73/-

2. The importer classified these goods under tariff item 08105000 and declared country of origin as Italy. Based on detailed risk analysis, the NCTC has identified the above Bill of entry as risky consignment in relation to mis-declaration/ concealment. Accordingly, inquiry/investigation has been initiated in the present case.

3. The goods covered in the said Bill of Entry were examined by the officers of SIIB section on 11.11.2022 under panchnama proceedings. During the course of Examination of the imported goods under Panchnama, it is found that the goods are Kiwi Fruits as per declaration in Bill of Entry. Further, during scrutiny of import documents, some discrepancies have been found in the documents submitted by the importer, such as date of issue and inspection on Phyto-Sanitary Certificate No. SHJAPH-02415-2107666, is 18-10-2022 whereas the Bill of lading No. DAHJEAMUN2205853 dated 13-10-2022 indicates that the goods were shipped on board on 12-10-2022. Container no. mentioned in Phyto-sanitary certificate is BSSU9900211 is different from the container no. DAHU9100859 mentioned in Bill of lading, and Bill of Entry. Import of Iran Origin Kiwi is prohibited in India from December, 2021 by the nodal body National Plant Protection Organisation (NPPO) under the Agriculture Ministry as per No.18- 23/ 2015-PP.II(e-16587) dated 07.12.2021. The goods i.e. Kiwi Fruits of the BE No. 3044795 dated-27.10.2022 having gross weight 24480 kgs and valued at Rs.834863.73/- appear to be mis-declared with respect to country of origin and incongruous documents submitted with the Bill of Entry in violation of Section 46 of the Customs Act, 1962 and the same have been placed under seizure being liable to confiscation under Section 111(m) of the Customs Act, 1962 vide seizure memo dated 22.11.22.

4. During the course of investigation, statement of Sh. Pradip Sinh Jadeja, authorized representative of the importer was recorded on 05.12.2022 under Section 108 of the Customs Act, **1962**. In his statement, he *inter-alia* stated that:-

(i) This is their first consignment of import of kiwi fruits. Shri Narendra Singh Manubha Zala, one of the partner, of M/ s Speedex Corporation contacted the Supplier Ahmad Farhan Fruits & Vegetables Trading Co., Dubai and placed order through purchase order no. P0/001/2022 dtd. 02.10.2022.

(ii) The COO certificate no.21932657 dtd.11.10.2022, where country of origin is mentioned as Italy was provided to them by supplier. With regard to additional information of import of kiwi Fruits into Dubai from Italy, they did not have any documents/evidence.

(iii) With regard to anomalies in respect of shipped on board date mentioned on bill of lading as 12.10.2022 and date of inspection as 18.10.2022 on phytosanitary certificate, they accepted the discrepancies as their mistake.

(iv) The importer has requested for permission to re-export the Kiwi Fruit imported vide B/E No. 3044795 dtd. 27-10-2022 after admitting the fact that they have submitted wrong documents along with the Bill of Entry.

(v) Further, this office has inquired with the Regional Plant Quarantine Station (RPQS), Gandhidham in respect of phytosanitary certificate status of the Bill of Entry No. 3044795 dtd. 27.10.2022 filed by the importer (RUD-2). The RPQS office vide their email dtd. 14.12.2022 replied with regard to status of PQ as below:-

"Status of PQ: Importer did not submit all relevant papers to PQ department hence application was done deficient to importers account with remark to submit valid documents. NO PQ clearance granted to importer yet."

5. The importer in his letter dtd. 24.11.2022 submitted to this office has mentioned that NOC is granted by Quarantine department & FSSAI showing the cargo is fit for clearance whereas the Regional Plant Quarantine Station (RPQS), Gandhidham vide their email dtd. 14.12.2022 replied that NO PQ clearance is granted to importer in respect of the Bill of Entry No. 3044795 dtd. 27.10.2022 filed by the importer (RUD-2). Further, on checking from EDI system, it has been noticed that no FSSAI & PQIS order number and override has been given. The importer failed in obligation in respect of submitting NOC with regard to import of Kiwi Fruits, as stipulated under Chapter-X Food Safety and Standards (Food Import) Regulations, 2016.

6. In light of this, it appeared that importer had attempted to clear the goods by hiding the facts from the authorities and thus rendered itself to penalty under Section 117 of the Customs Act, 1962.

7. Further, as per letter F. No. 18-23/ 2015-PP.II(e-16587) dtd. 07.12.2021 issued by National Plant Protection Organisation (NPPO) under the Agriculture Ministry, the import of Iran Origin Kiwi is prohibited in India from December, 2021. It appears that importer has tried to import the prohibited goods on the basis of forged import documents which explains the reasons for below mentioned discrepancies:-

8. Date of issue and inspection on Phyto-Sanitary Certificate No. SHJ-APH-02415-2107666, is 18-10-2022 whereas the Bill of lading No. DAHJEAMUN2205853 dated 13-10-2022 indicates that the goods were shipped on board on 12-10-2022. Container no. mentioned in Phyto-sanitary certificate is BSSU9900211 is different from the container no. DAHU9100859 mentioned in Bill of lading, and Bill of Entry.

9. The importer while filing impugned bills of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, ibid casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration and submitted incoherent documents as mentioned above.

10. Thus, it appears that mis-declaration in documents has been done to circumvent the prohibition imposed vide letter F. No. 18-23/ 2015-PPII(e-16587) dtd. 07.12.2021 issued by National Plant Protection Organisation(NPPO) under the Agriculture Ministry and thus rendered the goods i.e. **Kiwi Fruits of the BE No. 3044795 dated-27.10.2022 having gross weight 24480 kgs and valued at**

Rs.834863.73/- liable for confiscation under Section 111(d) ,Section 111 (m) and Section 111(o) of the Customs Act,1962.

11. The importer for his act of omission and commission rendered the impugned goods liable for confiscation under Section 111(d), Section 111 (m) and Section 111(o) has rendered himself liable penalty under section 112(i), 114AA, and 117 of the Customs Act, 1962.

Show Cause-

12. Accordingly, a Show Cause Notice was issued to **M/s. Speedex Corporation situated at Beside Neelkanth Hotel, Plot no.34/3,Sikka Patiya Road, Moti Khavdi, Jamnagar, IEC - 2413014187** was called upon to Show Cause to the Additional Commissioner of Customs, Customs House, Kandla having his office situated at Custom House, Near Balaji Temple, New Kandla, Dist. Kutch, Gujarat-370210 within 30 days from the receipt of this notice as to why:

(i) The goods having total value of Rs. 8,34,864/- (Rupees Eight Lakhs thirty four thousand eight hundred and sixty four Only) as detailed in Table - A above, should not be held liable for confiscation under Section 111(d),111(m) & Section 111(o) of the Customs Act, 1962,

(ii) Penalty should not be imposed under Section 112(i), 114AA & 117 of the Customs Act, 1962.

WRITTEN SUBMISSION-

13. No written submission has been submitted by M/s Speedex Corporation till date.

PERSONAL HEARING-

14. Opportunities of personal hearing were provided to the noticee on 18.10.2024, 11.12.2024 and 11.03.2025 vide letters dated 07.10.2024, 25.11.2024 and 04.03.2025 on the postal address available with this office. However, the letters returned back undelivered. Also, neither personal hearing was attended nor any submission was made in the matter.

DISCUSSION AND FINDINGS

15. I have carefully gone through the facts mentioned as in Show Cause Notice with Relied upon Documents and records available on record.

16. I find that the noticee i.e. Speedex Corporation have failed to submit any written reply to the show cause notice though it was specifically mentioned in the show cause notice itself to submit reply within 30 days. It was also specifically mentioned in the Show cause notice dated 17.05.2023 that if no reply to the notice was received from them within 30 days of receipt of the notice or if they failed to appear for the personal hearing on the date and time intimated to them, the case was liable to be decided on the basis of evidence available and merits, without any further reference to them.

17. It is crystal clear that sufficient time and ample opportunities of personal hearing have been granted to them however till date they have not filed any written submission in the matter. Adjudication proceedings is a time sensitive process and can't be kept pending for long. Hence, under the circumstances and in light of the above facts, I am left with no option but to decide the Show Cause Notice on the basis of records available on file.

18. In view of the above discussion and circumstances of the case, I rely on various decisions of Hon'ble Supreme Court, High Courts and Tribunals wherein the ex parte decisions of the adjudicating authority have been upheld, which are as under:-

i. "Our attention was also drawn to a recent decision of this court in A.K. Kripak Vs. union of India -1969(2) SSC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgement. One of these is the well-known principle of *audialterampartem* and it was argued that an *ex parte* hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."-Hon'ble Apex Court in *Jethmal Vs. U.O.I.-1999* (110) E.L.T. 379 (S.C.).

ii. "Natural Justice- Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence – principles of natural justice not violated."- *United Oil Mills Vs. C.C.& C.E., Cochin -2000* (124) E.L.T (Ker.)

iii. *Kumar Jagdish Ch. Sinha Vs. CCE, Calcutta-2000* (124) E.L.T. 118 (Cal.)

iv. *Saketh India Ltd. Vs. U.O.I.-2002* (143) E.L.T 274 (Del.)

v. *Devi Dayal Vs. U.O.I.-2002* (144) E.L.T. 502 (Del.) maintained in 2003 (151) E.L.T. A288 (S.C)

vi. *Gopinath Chem. Tech Ltd Vs. C.C.E., Ahmedabad-II-2004*(171) E.L.T.412(Trib. Mumbai)

vii. *F N Roy Vs. C.C., Calcutta-1983* (13) E.L.T. 1296 (S.C.)

19. It is observed that, M/s. Speedex Corporation situated at Beside Neelkanth Hotel, Plot no.34/3, Sikka Patiya Road, Moti Khavdi, Jamnagar has filed a Bill Of Entry No. 3044795 dtd. 27.10.2022 through their Customs Broker, M/ s Ribhus International Private Limited at Kandla port for clearance of import goods i.e. "Kiwi Fruit". The detail of bill of entry is as below:

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01	3044795 dtd. 27.10.2022	Kiwi Fruit(CETH-08105000)	8,34,863.73/-

20. It is observed that, the importer classified these goods under tariff item 08105000 and declared country of origin as Italy. Based on detailed risk analysis, the NCTC has identified the above Bill of entry as risky consignment in relation to mis-declaration/ concealment.

21. It is observed that, during the course of Examination of the imported goods it was found that the goods are Kiwi Fruits as per declaration in Bill of Entry. Further, during scrutiny of import documents, some discrepancies have been found in the documents submitted by the importer, such as date of issue and inspection on Phyto-Sanitary Certificate No. SHJAPH-02415-2107666, is 18-10-2022 whereas the Bill of lading No. DAHJEAMUN2205853 dated 13-10-2022 indicates that the goods were shipped on board on 12-10-2022. Container no. mentioned in Phyto-sanitary certificate is BSSU9900211 is different from the container no. DAHU9100859 mentioned in Bill of lading, and Bill of Entry. Import of Iran Origin Kiwi is prohibited in India from December, 2021 by

the nodal body National Plant Protection Organisation (NPPO) under the Agriculture Ministry as per No.18- 23/ 2015-PP.II(e-16587) dated 07.12.2021. The goods i.e. Kiwi Fruits of the BE No. 3044795 dated-27.10.2022 having gross weight 24480 kgs and valued at Rs.834863.73/- have been mis-declared with respect to country of origin and incongruous documents submitted with the Bill of Entry in violation of Section 46 of the Customs Act, 1962 and the same have been placed under seizure being liable to confiscation under Section 111(m) of the Customs Act, 1962 vide seizure memo dated 22.11.22.

22. It is further observed that, during the course of investigation, in his statement Sh. Pradip Singh Jadeja, authorized representative of the importer *inter-alia* stated that this is their first consignment of import of kiwi fruits. Shri Narendra Singh Manubha Zala, one of the partner, of M/ s Speedex Corporation contacted the Supplier Ahmad Farhan Fruits & Vegetables Trading Co., Dubai and placed order through purchase order no. P0/001/2022 dtd. 02.10.2022. The COO certificate no.21932657 dtd.11.10.2022, where country of origin is mentioned as Italy was provided to them by supplier. *With regard to additional information of import of kiwi Fruits into Dubai from Italy, they did not have any documents/evidence.* With regard to anomalies in respect of shipped on board date mentioned on bill of lading as 12.10.2022 and date of inspection as 18.10.2022 on phyto-sanitary certificate, they accepted the discrepancies as their mistake.

23. It is observed that, the importer has requested for permission to re-export the Kiwi Fruit imported vide B/E No. 3044795 dtd. 27-10-2022 after admitting the fact that they have submitted wrong documents along with the Bill of Entry.

24. It is observed that, further, this office has inquired with the Regional Plant Quarantine Station (RPQS), Gandhidham in respect of phytosanitary certificate status of the Bill of Entry No. 3044795 dtd. 27.10.2022 filed by the importer. The RPQS office vide their email dtd.14.12.2022 replied with regard to status of PQ as below:-

"Status of PQ: Importer did not submit all relevant papers to PQ department hence application was done deficient to importers account with remark to submit valid documents. NO PQ clearance granted to importer yet."

25. In view of the above, it is crystal clear that the importer has indulged in improper importation of prohibited goods by declaring incorrect information and incorrect documents before the authorities of Customs.

CONFISCATION OF GOODS

26. It is observed that, the mis-declaration in documents has been done by M/ s Speedex Corporation to circumvent the prohibition imposed vide letter F. No. 18-23/2015-PPII(e-16587) dtd. 07.12.2021 issued by National Plant Protection Organisation (NPPO) under the Agriculture Ministry and thus rendered the goods i.e. Kiwi Fruits of the BE No. 3044795 dated-27.10.2022 having gross weight 24480 kgs and valued at Rs. 834863.73/- liable for confiscation under Section 111(d), Section 111 (m) and Section 111(o) of the Customs Act,1962.

In this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai), upheld in Apex court in 2003 (ELT A309 (SC), wherein it is held that when mis-declaration is established, goods are liable for confiscation. In view of the above, I hold that the goods are liable to confiscation under the provisions of Section 111(d), 111(m) and 111(o) of the Customs Act, 1962.

PENALTY UNDER SECTION 117 OF THE CUSTOMS ACT, 1962-

27. It is observed that, the importer in his letter dtd. 24.11.2022 mentioned that NOC is granted by Quarantine department & FSSAI showing the cargo

is fit for clearance whereas the Regional Plant Quarantine Station (RPQS), Gandhidham vide their email dtd. 14.12.2022 informed that NO PQ clearance is granted to importer in respect of the Bill of Entry No. 3044795 dtd. 27.10.2022 filed by the importer (RUD-2). Further, on checking from EDI system, it has been noticed that no FSSAI & PQIS order number and override has been given. The importer failed in obligation in respect of submitting NOC with regard to import of Kiwi Fruits, as stipulated under Chapter - X Food Safety and Standards (Food Import) Regulations, 2016. In light of this, it is clear that importer has attempted to clear the goods by hiding the facts from the authorities and thus rendered themselves to penalty under Section 117 of the Customs Act, 1962.

PENALTY UNDER SECTION 112(i) OF THE CUSTOMS ACT, 1962-

28. With regard to penalty under Section 112(i) of The Customs Act, 1962, I find that M/s. Speedex Corporation have rendered the goods liable for confiscation by mis-declaring the same which in turn has rendered them liable to penal action under Section 112, of the of the Customs Act, 1962.

PENALTY UNDER SECTION 114AA and 117 OF THE CUSTOMS ACT, 1962-

29. It is observed that, upon M/s. Speedex Corporation have indulged in submitting incorrect information/documents before the authorities of customs which has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

30. Further, their act of submitting incorrect/forged documents thereby contravening Section 46 of the Customs Act, 1962 has rendered them liable for penal action under Section 117 of the Customs Act, 1962

31. In view of the above discussion and findings, I hereby pass the following order-

- (i) I order for absolute confiscation of the goods having total value of Rs. 8,34,864/- (Rupees Eight Lakhs thirty four thousand eight hundred and sixty four Only) as detailed in Table - A above, under Section 111(d), 111(m) & Section 111(o) of the Customs Act, 1962.
- (ii) I impose Penalty of Rs. 8,34,864/- (Rupees Eight Lakhs thirty four thousand eight hundred and sixty four Only) upon M/s. Speedex Corporation under Section under Section 112(a) (i) of the Customs Act, 1962.
- (iii) I impose Penalty of Rs. 8,34,864/- (Rupees Eight Lakhs thirty four thousand eight hundred and sixty four Only) upon M/s. Speedex Corporation under Section under Section 114AA of the Customs Act, 1962.
- (iv) I impose Penalty of Rs. 4,00,000/- (Rupees Four Lakhs only) upon M/s. Speedex Corporation under Section under Section 117 of the Customs Act, 1962.

32. This order is issued without prejudice to any action that can be taken against SEZ unit or any other person under this Act or any other act for the time being in force.

**Rakesh Kumar Jain
Additional Commissioner of Customs**

F. No.: GEN/ADJ/ADC/2124/2023-Adjn-O/o Commr-Cus-Kandla

DIN: 20250371ML0000999B7A

To,

**M/s. Speedex Corporation, Beside Neelkanth Hotel,
Plot no.34/3, Sikka Patiya Road, MotiKhavdi, Jamnagar,Gujarat**

Copy to:

1. The Deputy/Assistant Commissioner (SIIB/RRA/TRC/EDI) for necessary action.
2. Guard File