
	OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838- 271426/271428 FAX :02838-271425 Email:- group1-mundra@gov.in	 सत्यमेव जयते
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DIN: 20260271MO00003883A1

SCN NO:- 201/2025-26/ADC/ZDC/MCH/Gr-1

Demand cum Show-Cause- Notice-**(Issued under section 28(4) of Customs Act, 1962)**

M/s Ananya Overseas, #46, 2nd Floor, New Katra Ishwar Bhawan Khari Baoli-110006 (IEC 0516944827) (hereinafter also referred to as "the Importer/the Noticee" for the sake of brevity") has filed following Bill of Entry for the clearance of below mentioned goods under CTH 08021200 having assessable value of Rs **80,49,146/-**.

Sr. No.	BE NO.	BE Date	ITE M No.	Item Description	Assessed CTH	Assessed Value	BCD Amount	Total Duty
1	2929204	26.02.2021	1	Almond Kernel	08021200	8049146	900000	900000

2. A detailed analysis of import data of "dry fruits and nuts" for the period from 01.07.2017 to 30.09.2021 was carried out by NCTC, Mumbai. It is mentioned that the dry fruits and nuts" viz., almonds, cashew nuts, walnuts, hazelnuts, brazil nuts, pistachios, are classifiable under CTH 0801 and 0802 of First Schedule to the Customs Tariff Act, 1975. As per Notification No. 02/2017 – Integrated Tax (Rate) dated 28.06.2017, the IGST rate of these fruits and nuts is "Nil", if imported in "fresh" condition, whether or not shelled or peeled i.e., in the state as plucked. However, if these goods are imported in frozen or dried condition, then, as per Notification No. 01/2017 – Integrated Tax (Rate) dated 28.06.2017, such goods attract IGST @ 5% and 12%.

3. The relevant portion of CTH 0801 & CTH 0802 of the First Schedule to the Customs Tariff Act, 1975 is reproduced below:-

HS Code	Level	Item Description
0801		COCONUTS, BRAZIL NUTS AND CASHEW NUTS, FRESH OR DRIED, WHETHER OR NOT SHELLLED OR PEELED
	-	Brazil nuts :
0801 21 00	--	Inshell
0801 22 00	--	Shelled
	-	Cashew nuts :
0801 31 00	--	Inshell
0801 32	--	Shelled
0801 32 10	---	Cashew kernel, broken
0801 32 20	---	Cashew kernel, whole
0801 32 90	---	Other

HS Code	Level	Item Description
0802		OTHER NUTS,FRESH OR DRIED, WHETHER OR NOT SHELLED OR PEELED
	-	ALMONDS:
0802 11 00	--	In shell
0802 12 00	--	Shelled
	-	Hazelnuts or filberts (Corylus spp.):
0802 21 00	--	In shell
0802 22 00	--	Shelled
		Walnuts :
0802 31 00	--	In shell
0802 32 00	--	Shelled
		Chestnuts (Castanea spp.)
0802 41 00	--	In shell
0802 42 00	--	Shelled
		Pistachios :
0802 51 00	--	In shell
0802 52 00	--	Shelled
		Macadamia nuts :
0802 61 00	--	In shell
0802 62 00	--	Shelled
0802 70 00	-	Kola nuts (Cola Spp.)
0802 80	-	Areca nuts :
0802 80 10	---	Whole
0802 80 20	---	Split
0802 80 30	---	Ground
0802 80 90	---	Other
0802 90 00	-	Other

3.1. Furthermore, the relevant extracts from the HSN General Explanatory Notes to Chapter 8 are reproduced below: "This Chapter covers fruit, nuts and peel of citrus fruit or melons (including watermelons), generally intended for human consumption (whether as presented or after processing). They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried); provided they are unsuitable for immediate consumption in that state, they may be provisionally preserved (e.g., by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions). The term "chilled" means that the temperature of a product has been reduced, generally to around 0 °C, without the product being frozen. However, some products, such as melons and certain citrus fruit, may be considered to be chilled when their temperature has been reduced to and maintained at + 10 °C. The expression "frozen" means that the product has been cooled to below the product's freezing point until it is frozen throughout.

3.2 From the above, it is evident that Chapter 8 differentiates between fresh and dried fruits. Fresh fruits (including chilled) are those that are not frozen or dried (including dehydrated, evaporated or freeze-dried); in other words, fresh fruits are essentially in a form as occurring in nature.

3.3 The 45th Meeting of the GST Council held on 17th September 2021 clarified that there is a distinction between fresh and dried fruits for the application of GST rate of "nil" and 5%/12%, respectively. Accordingly, CBIC vide Circular no. 163/19/2021-GST dated 06.10.2021 has issued a clarification with regard to the GST rates and classification based on the recommendations of the 45th Meeting of the GST Council. At paragraph 3.2 of the said Circular, a distinction has been made between fresh and dried fruits & nuts; accordingly, a

conclusion has been drawn at paragraph 3.3. The relevant portion is reproduced below:-

“The clarification regarding the distinction between fresh and dried fruits and nuts and applicable GST rates. At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/ 12%. The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried). Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts. Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled. However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts”.

3.4 The exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.”

3.5 From the above clarification, it is amply clear that exemption from GST is applicable to only fresh fruits and nuts, which are meant to be supplied in the state as plucked. The said exemption is not available for fruits/nuts that are frozen or dried. Therefore, the applicable IGST for dried fruits/nuts is 5%/12%, as the case may be.

4. The said importer had filed the mentioned Bill of Entry for home clearance of the said imported goods under CTH 08021200 of the first schedule of the Customs Tariff Act, 1975. The said importer had claimed the benefit of S.No. 49 of the Notification 02/2017-Integrated Tax (Rate) dated 28.06.2017 and paid the IGST @NIL.

5. The relevant portion of Notification No. 02/2017 – Integrated Tax (Rate) dated 28.06.2017 is given below:

Sr. No	Chapter Sub-heading	Description of Goods	
48.	0801	Brazil nuts, fresh, whether or not shelled or peeled	0 %
49.	0802	Other nuts, Other nuts, fresh such as Almonds, Hazelnuts or filberts (Coryius spp.), walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.), Areca nuts, fresh, whether or not shelled or peeled	0 %

5.1. Moreover, the relevant portion of Notification No. 01/2017 – Integrated Tax (Rate) dated 28.06.2017 is extracted below:-

Sr.No	Chapter Sub-heading	Description of Goods	Schedule	Rate
14.	0801	Brazil nuts, dried, whether or not shelled or peeled and desiccated coconuts [Amended by Corrigendum dated 27.07.2017; [43/2017 IGST dated 14.11.2017 The words “and desiccated coconuts” omitted]	II	12%
15.	0802	Other nuts, dried, whether or not shelled or peeled, such as Almonds, Hazelnuts or filberts (Corylus spp.), Walnuts, Chestnuts (Castanea spp.), Pistachios, Macadamia nuts, Kola nuts (Cola spp.) [other than dried areca nuts] [27/2017-IGST dated 22.09.2017 – SNo. 15 amended	II	12%

5.2. On the basis of CTIs of “dry fruits and nuts”, the rates of IGST prescribed vide the above mentioned Notification, read with the said clarificatory circular, the effective IGST rates of IGST for “fresh” fruits/nuts, as well as “dried” fruits/nuts are summarized below:-

Sr. No	Description of Goods	CTH	Rates of Duty		
			Fresh	Dried	
1	Coconuts	InShell	0801 12 10	0	0
		Shelled	0801 12 20	0	0
2	Brazil Nuts	InShell	0801 21 00	0	12%
		Shelled	0801 22 00	0	12%
3	CashewNuts	InShell	0801 31 00	5%	5%
		InShell	0801 31 00	5%	5%
		Shelled	0801 32 00	5%	5%
4	Almonds	InShell	0802 11 00	0	12%
		Shelled	0802 12 00	0	12%
		Shelled	0802 12 00	0	12%
5	Hazelnuts	InShell	0802 21 00	0	12%
		Shelled	0802 22 00	0	12%
6	Walnuts	InShell	0802 31 00	0	5%
		InShell	0802 31 00	0	5%
		Shelled	0802 32 00	0	5%
7	Chestnuts	InShell	0802 41 00	0	12%
		Shelled	0802 42 00	0	12%

8	Pistachio	InShell	0802 51 00	0	12%
		Shelled	0802 52 00	0	12%
9	Areca nuts	Whole	0802 80 10	0	5%
		Split	0802 80 20	0	5%

5.3 Additionally, from the description of goods it is seen that the imports were “kernels” of, Almond. **‘Kernel’**, by definition, is the essential part of the seed, that is within the seed walls. It is the inner softer part of a seed, fruit or nut. From the item descriptions, it is also seen that some of the almonds, pistachios and walnuts were “in-shell” or “shelled”. ‘In-shell’ almonds/pistachio/walnuts are obtained after hulling, which is a process of removing the hull (outer cover of the shell) and drying. ‘Shelled’ almonds/pistachio/walnuts is obtained through shelling, a process where the shells are cracked and removed.

A standard processing workflow for almond kernels involves the following steps:

1. **Harvesting:** Almond are shaken from the trees and collected on the ground.
2. **Dehulling:** The soft outer hull (epicarp and mesocarp) is removed immediately after harvesting. This is typically done using an abrasive dehulling machine.
3. **Drying:** The nuts are dried to reduce their moisture content.
4. **Sorting and shelling:** Nuts are sorted to separate split and unsplit ones. The unsplit nuts are then mechanically shelled to extract the kernels. Water flotation can also separate split from unsplit nuts.
5. **Kernel drying:** The separated pistachio kernels are dried on trays at controlled temperatures (e.g., 95–100°F or 35–38°C).
6. **Grading and sorting:** The kernels are graded based on quality, size, and colour.
7. **Roasting (optional):** Roasting enhances flavour and extends shelf life. Optimization studies, often using methods like Response Surface Methodology (RSM), determine the best temperature and time for desired moisture content and color.
8. **Packaging:** Kernels are packed under controlled conditions to ensure freshness and shelf stability.

6 In view of the above, it appears that the importer has wrongly claimed the Serial No. 49 of IGST Notification 02/2017- IGST(Rate) with an intention of paying NIL IGST instead of applicable Serial No. 15 of Schedule -II of IGST Notification 01/2017-IGST (Rate). Total amount of short paid IGST comes to **Rs. 10,73,897/-**. The details of the same are as under:-

S. N	BE No.	BE Date	Item No.	Assessed Value	BCD Amount	IGST Paid	IGST Payabl	Difference ntial
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o.							e @12%	IGST to be recover ed
1	2929204	26.02.2021	1	8049145	900000	0	1073897	1073897
								1073897

7. Relevant Legal provisions, in so far as they relate to the facts of the case:-

- A. **Notification No. 01/2017 – Integrated Tax (Rate) dated 28.06.2017.**
 B. **Section 46 of the Customs Act, 1962** provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

“(i) 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”.

- C. **Section 28 (4) of the Customs Act, 1962** provides that *“Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*
- a. *collusion; or*
 - b. *any willful mis-statement; or*
 - c. *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice”.

E . **Section 28 (AA) of Customs Act, 1962** provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

F **Section 114A of the Customs Act, 1962** deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:- **114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or**

paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

8. It appears that the importer has willfully mis-stated the facts & wrongly availed the benefit of Serial No. 49 of IGST Notification 02/2017-IGST(Rate) which prescribes IGST duty @ 0 % instead of categorizing under Serial No. 15 of Schedule-II of IGST Notification 01/2017-IGST (Rate) which attracts IGST @ 12%.

9. In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the importer to defraud the exchequer by adopting the modus operandi of mis-declaring the IGST under Serial No. 49 of IGST Notification 02/2017-IGST(Rate) of the goods imported.

10. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the same under Serial No. 49 of IGST Notification 02/2017-IGST(Rate) which prescribes NIL rate of IGST. With the introduction of self- assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs. 80,49,145/-** as detailed in above table, appears to liable for confiscation under Section 111(m) of the Customs Act, 1962.

11. It appears that the importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Further, it appears that in respect of the Bill of Entry(ies) as detailed in above table, such wrong claim of notifications benefit on the part of the importer has resulted into short levy of duty of **Rs 10,73,897** (Rs. Ten Lakh Seventy Three Thousand Eight Hundred Ninety Seven Only) which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act. For such act of omission and commission, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

12. Now, therefore, M/s Ananya Overseas, #46, 2nd Floor, New Katra Ishwar Bhawan Khari Baoli-110006 (IEC 0516944827) are hereby called upon to show cause to the **Additional Commissioner of Customs (Import Assessment)**, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

- i. The goods having assessable value of **Rs. 80,49,145/-** covered under said Bill of Entry as detailed in above table, should not be held liable for confiscation

- under Section 111(m) of the Customs Act, 1962;
- ii. The benefit of the Serial No. 49 of IGST Notification 02/2017-IGST(Rate) on the goods should not be denied and the same should not be categorized at correct rate @12% under Serial No. 15 of Schedule-II of IGST Notification 01/2017-IGST (Rate) dated 28.06.2017.
 - iii. The differential duty worked out to **Rs. 10,73,897** (Rs. Ten Lakh Seventy Three Thousand Eight Hundred Ninety Seven Only) in respect of said Bill of Entry(ies) as detailed in above table, should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
 - iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.
16. The importer further required to produce at the time of show cause, all the evidences upon which they intend to rely in support of their defense. They are further called upon to inform in writing to the Deputy/Assistant Commissioner of Customs, Custom House, Mundra as to whether they desire to be heard in person before the case is adjudicated. If no cause is shown within 30 days from the date of receipt of this notice or if they fail to appear for personal hearing when the case is posted for hearing the case will be decided ex-parte on the basis of evidences available on record.
17. This Show Cause Notice is being issued as per the scrutiny of records conducted so far. Hence, the department reserves its rights under the provisions of Customs Act, 1962 to conduct further Audit / Scrutiny of the records and issue subsequent or separate show cause notice(s), if any.
18. The present Show Cause Notice is issued without prejudice to any other action that may be taken under any other provision of the Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being in force in India. The department is also free to issue addendum to this Show Cause Notice, if any, further fact/ documents come to notice.
19. The importer/noticee is further informed that they have the right to opt for closure of these proceedings under Section 28(6) of Customs Act, 1962. If they so decide, then in terms of Section 28(5) of the Customs Act, 1962, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be accepted by them, and the interest payable thereon under Section 28AA and penalty equal to fifteen percent of the duty specified in this notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the concerned Adjudicating and/or of such payment in writing.

(Additional Commissioner)
Import Assessment
Custom House, Mundra

To,
M/s Ananya Overseas,
#46, 2nd Floor, New Katra Ishwar Bhawan
Khari Baoli-110006 (IEC 0516944827)

Copy to:

1. The Deputy/Assistant Commissioner (TRCC/RRA/EDI) for kind information and necessary action.
2. Guard File.