

	OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467	
DIN- 20250371ML000000750B		
A	File No.	
A	File No.	GEN/ADJ/ADC/2528/2024-Adjn-O/o-Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/RKJ/32/2024-25
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 dated 16.11.2023
G	Noticee / Party Importer / Exporter	M/s. Jyoti International Fruits

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:

“ सीमाशुल्कआयुक्त (अपील),

7 वीं मंजिल, मूदुलटावर, 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/- रुपये 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 मदस्य-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 जापन के साथ डूटी/ व्याज/ 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.

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. Jyoti International Fruits, Plot No 12, Bhola Road, Meerut, Uttar Pradesh-250002 (IEC-FVUPP1057G) and PAN No.: FVUPP1057G (hereinafter referred to as 'the Importer'), had filed a Bill of Entry No. 2903994 dated 15.10.2022 through their Customs Broker, M/s Ribhus International Private Limited (AAHCR1517MCH001) at Kandla port for clearance of imported goods i.e. "Kiwi Fruit". The detail of bill of entry is as below: -

(Table-A)

Sr. No.	Bill of Entry No. and Date	Description of Goods	Declared Value of the goods (in Rs.)
1.	2903994 dated 15.10.2022	Kiwi Fruit (CTH-08105000)	41,18,798.07/-

2. The importer classified these goods under tariff item 08105000 and declared country of origin as Chile. Based on detailed risk analysis, the NCTC had identified the above Bill of entry as risky consignment in relation to mis-declaration/concealment & suspicious certificate of Country of Origin of Goods. Accordingly, inquiry/investigation was initiated in the instant case.

3. The goods i.e. "Kiwi Fruit" covered in the said Bill of Entry were examined by the officers of SIIB and proceedings were recorded under panchnama dated 27th & 28th Oct 2022. During the course of examination of the imported goods under Panchnama, it is found that the goods are Kiwi Fruits as per declaration in aforesaid Bill of Entry.

4. As per the NCTC alert, the Bill of Entry No. 2903994 dated 15.10.2022 was containing "kiwi fruits" with the *country of origin being Chile and port of loading being Jebel Ali (AEJEA)*. Further, the importer had previously filed 08 bills of entry from Oct'21 till date, with an A.V. of over Rs. 2.5 Crore, containing Fresh kiwi, majority of which has Country of origin as Iran. There was no entry inward for 02 previous bills which had country of origin as Chile for kiwi. In response to the NCTC Alert, received regarding the possibility of the dubious certificate of Country of Origin, summons was issued to the said importer. Shri Bharatsingh Kishansinh Rajput, Manager, M/s. Jyoti International Fruits, appeared before the competent authority on 07.11.2022 and tendered his statement (RUD-1), wherein, he inter-alia, stated that:

- i. The IEC of the Firm M/s. Jyoti International Fruits is FVUPP1057G and is a merchant exporter mainly dealing in the fruits like apples, oranges and Kiwi from UAE through the COO from South Africa & Chile. They generally don't export any goods rather do import of the goods and supply the same to the traders.
- ii. They had imported 4 consignments of oranges at Nhava Sheva Port. In respect of Kiwi, this is their first consignment at Kandla Port which is imported under BE No. 2903994 dated 15.10.2022.
- iii. M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, UAE is supplier of the Kiwi Fruit and the supplier is engaged in import and export alongwith the warehousing work of the cargo of fruits and vegetables. He is

generally engaged with him only in relation to his consignments and not aware in respect of other things about the supplier.

- iv. The consignment is Kiwi Fruit and the same is supplied from the M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, UAE. They had raised the purchase order of Kiwi Fruit of Chile Origin to the supplier and the goods were imported by their supplier M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no10166, Rasal Khor, Dubai, UAE and the same was imported under BE No.2903994 dated 15.10.2022.
- v. They don't have any agreement with their supplier. They had raised the purchase order of 8085 boxes for the Kiwi Fruit with the country of origin as Chile.
5. Shri Bharatsingh Kishansinh Rajput, Manager, M/s. Jyoti International Fruit, Meerut submitted the purchase order raised by him but he on behalf of M/s. Jyoti International Fruit *failed to submit the Certificate of Country of origin* issued from Chile country or the documents for the movement of goods from Chile to UAE.
6. In pursuance to the further investigation, statement (RUD-2) of Shri Jaymin Jagdishkumar Thakkar, Director of M/s Sarang Maritime Logistics Pvt. Ltd., Gandhidham (Container Line), was recorded under Section108 of Customs Act, 1962 on 14.11.2022. During the course of recording of statement, he inter-alia submitted that:
 - i. He is the director of M/s Sarang Maritime Logistics Pvt. Ltd., Gandhidham. His company is engaged in container line and agency work. He looks after overall supervision of sales and office in his company.
 - ii. He perused the Bills of Lading (HBL & MBL) and confirmed that the said HBL had been issued by the forwarder M/s Transvision, Shipping Pvt Ltd., Dubai and MBL had been issued by their principal M/s Sea Time Dubai. He further stated that three refrigerated containers bearing no.TDRU7940204, TRIU8426269 & TRIU8441279 were shipped from Jebel Ali port to Mundra port with cargo Kiwi fruit under the aforesaid BL.
 - iii. He stated that all the three containers were taken on lease by their principal M/s Sea Time Dubai from M/s Jin Ji Maritime Equipment Services, Shanghai, China on 04.07.2022. The first journey was from China to Jebel Ali on 17.07.2022 with cargo Bag pack, glass bottle, plastic bottle & cap. The present journey of the containers is the second journey, after it was taken on lease, from Jebel Ali to Mundra.
7. Almost, 1 month passed from the arrival of the Consignment of Kiwi Fruit covered under BE No 2903994 dated 15.10.2022, but the importer failed to submit the Certificate issued by the Chile Country in respect of the Country of Origin of the goods as the consignment was declared of Chile Origin in the aforesaid Bill of Entry filed at the Kandla Port. Accordingly, on the reasonable belief, that the certificate of Country of Origin issued by the Dubai Chamber of Commerce appeared to be dubious, the consignment of Kiwi Fruit covered under Bill of Entry No2903994 dated 15.10.2022 was seized under Panchnama dated 19.11.2022 and seizure

memo dated 19.11.2022 (RUD-5). The custody of the consignment of the aforesaid bill of entry was handed over to the Manager, M/s. A.V. Joshi & Co. CFS, Gandhidham. Further, it is submitted that there is prohibition imposed by the NPPO, Ministry of Agriculture on the import of Kiwi Fruit of Iran Origin vide F.No.18- 23/2015-PP.II (e-16587) dated 07.12.2021 read with section 11 of the Customs Act, 1962.

8. Thereafter, another summon was issued to the importer, M/s. Jyoti International Fruits, Meerut, U.P. to submit the certificate of Origin issued by Chile Country or any other documents to support his claim of COO as Chile. In response to the summons issued, a further statement (RUD-3) of Shri Bharatsingh Kishansinh Rajput, Manager of M/s. Jyoti International Fruits, IEC (FVUPP1057G) was recorded on 09.12.2022. During the course of statement, Shri Bharatsingh Kishansinh Rajput inter-alia submitted that:

- i. they had raised the purchase order of Kiwi Fruit of Chile Origin. Further, they had asked the exporter about the documents related to the movement of cargo of Kiwi Fruit from Chile to UAE but the exporter (M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, and UAE) is not cooperating with them and denying to give such details citing the same as their personal matter.
- ii. person from the importer M/s Jyoti International Fruit, Meerut went to Dubai for the booking of the shipment and apart from that they don't have any correspondence with the supplier, M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box No10166,Rasal Khor, Dubai, UAE.
- iii. they have asked the exporter for the documents from Chile to Dubai in respect of the movement of goods i.e. Kiwi Fruit but they (Exporter M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, UAE) are saying that they cannot provide their personal details. As of now, the exporter M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, UAE is not cooperating with them.
- iv. As per the terms of the trade quoted in the purchase order, the payments was to be done after arrival of 30 days but till date no payment is made to the supplier. However, as per their understanding with the Exporter, M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, UAE they would be making payment after 90 days from the clearance of the shipment.

9. Shri Bharatsingh Kishansinh Rajput, Manager, M/s Jyoti International Fruits, at one point of time during the course of statement stated that the supplier is not cooperating and on the other hand, he was saying that on mutual understanding basis, the payment terms was postponed to 90 days from 30 days of arrival. This was a contrast statement itself so another question was asked about the paradox, to which he replied that the reason for not providing the documents by exporter (supplier) M/s. Anusaya Fresh Fruits & Vegetables LLC, Dubai, UAE in respect of movement of cargo of Kiwi Fruit from Chile to UAE is that the exporter thinks that if he provides such details to the importer, then they may contact directly to the

Chile based supplier which may result in monetary loss to them. The payment terms got extension due to their request to the exporter and mutual relation between them. In addition to this, they stated that they had raised the purchase order of Kiwi Fruit of Chile Origin and the supplier had provided the COO also in respect of the same which is issued by a government department so they did not bother about the genuineness of Country of Origin of goods. Rest whether the goods are of Chile origin or from some other country origin, they had no idea about the same. What they had is Country of Origin certificate issued by Dubai Chamber of Commerce and in that certificate, COO is mentioned as Chile. It is worth to mention here that there is prohibition imposed by the NPPO, Ministry of Agriculture on the import of Kiwi Fruit of Iran Origin vide F.No.18-23/2015-PP.II(e- 16587) dated 07.12.2021 read with section11 of the Customs Act,1962.

10. During the course of statement tendered by the Shri Bharatsingh Rajput, he inter-alia stated that he had no idea about the country of origin of the goods even though he had raised the purchase order of Kiwi Fruit of Chile Origin, which clearly shows that he did not bother about the origin of the goods whether it is of Chile Origin or any other country origin. One thing he was bothered that the goods should be Kiwi Fruit. This is clearly violation of Section 46 of the Customs Act, 1962 under which the importer has to ensure the correctness of all the details provided to the Customs while filing the Bill of Entry at any port.
11. During the course of statement, Shri Bharatsingh Rajput submitted the self-certified copy of the Purchase Order, Certificate of country of origin issued by the Dubai Chamber of Commerce, Quarantine Clearance/ provisional quarantine clearance certificate dated 31.10.2022 issued by the Directorate Of Plant Protection, Quarantine & Storage RPQS Kandla, Ministry Of Agriculture & Farmers Welfare Department of Agriculture & Farmers Welfare, GOI having registration No IRO19KAN2022003068, copy of NOC from the Food Safety and Standards Authority of India, Phytosanitary certificate(PSC)of Re-Export etc. to the Custom House, Kandla.
12. Meanwhile, a mail was sent to the Office of Directorate of Plant Protection, Quarantine & Storage RPQS Kandla regarding the status of Phytosanitary certificate no. 0002315479 dated 10.10.2022 in respect of the Bill of Entry No 2903994 dated 15.10.2022. The said Phytosanitary certificate was issued by the UAE Authority having country of origin declared as Chile. Further, a mail (RUD-4) from the Office of Directorate of Plant Protection, Quarantine & Storage, RPQS Kandla received to the email id of SIIB Office of the Custom House, Kandla on 14.12.2022. Vide the said mail, the status of the Phytosanitary certificate was revealed. The exact words quoted by the RPQS Kandla are as under:

Status of PQ: Importer did not submit the country of origins' PSC hence document relaxation (First time relaxation under Chapter VI of PQ Order 2003) was issued to importer and PQ clearance granted after charging the fee for plant quarantine inspection at five times of normal rates.

13. From the status of the PQ submitted by the RPQS Kandla, it is observed that the

PSC (Phytosanitary certificate) of declared country Chile origin was not submitted and the Certificate of PSC submitted by the importer could not be verified, so one time relaxation was granted under Chapter VI of PQ Order, 2003. This also validate that the importer used the forged documents of PSC to import the KIWI Fruit which clearly violates the provision of Section 46 of the Customs Act, 1962.

- 14.Upon receipt of the mail from the RPQS Kandla, Office of Directorate of Plant Protection, Quarantine & Storage, letter dated 14.12.2022 from the SIIB office was issued to the said Importer for the submission of the Certificate of Country of Origin and Phytosanitary Certificate issued by the competent authority of Chile. The importer failed to submit the Certificate of Country of Origin and Phytosanitary Certificate issued by the competent authority of Chile. Accordingly, summons dated 31.01.2023 & 22.03.2023 were issued for the submission of the aforesaid documents which were asked for. The importer failed to submit the documents and also failed to appear before the competent authority of the Custom House, Kandla. By not appearing before the competent authority shows that the importer was well aware about the forged documents produced by him before the Customs for the clearance of the alleged prohibited goods of Kiwi Fruit covered under bill of Entry No 2903994 dated 15.10.2022. It is worth to mention here that there is prohibition imposed by the NPPO, Ministry of Agriculture on the import of Kiwi Fruit of Iran Origin vide F.No.18-23/2015-PP. II(e-16587) dated 07.12.2021 read with section11 of the Customs Act,1962.
- 15.The importer had filed the Bill of Entry No 2903994 dated 15.10.2022 for the import of Kiwi Fruit through his Custom Broker, M/s. Ribhus International Private Limited. Vide the aforesaid Bill of Entry, the country of origin of the goods was declared as Chile but the said importer failed to produce the document of COO issued by the Chile or the documents related to the movement of the goods from Chile to Jebel Ali (UAE). Thus he had violated the provision of Section 46(4) of the Customs Act, 1962 under which he has to file the declaration about the truth of the content so declared in the Bill of Entry.
- 16.Further, it appears that the importer had forged the documents especially the Certificate of the Country of Origin issued by the Dubai Chamber of Commerce to hide the actual origin of the goods which is in the instant case appears to be Iran Origin. Thus by declaring the wrong COO and forging the documents, he had violated the provision of the section 46(4A) of the Customs Act.
- 17.The importer, M/s. Jyoti International Fruits had forged the documents especially the Certificate the Origin by declaring the goods of Chile Origin even though he could not produce the supporting documents in relation to his claim of the origin of the goods & also failed to produce the documents related to movement of the goods from Chile to UAE. Thus the said importer tried to import the prohibited goods by virtue of Section 2(33) of the Customs Act 1962, as there is prohibition imposed by the NPPO, Ministry of Agriculture vide F. No. 18-23/2015-PP.II(e- 16587) dated 07.12.2021 read with section 11 of the Customs Act 1962. Thus, it appears that the import of Kiwi Fruit vide the aforesaid bill of

entry, making the goods liable for confiscation under section 111(d) of the Customs Act 1962 and also the goods to be placed under the category of Smuggled Goods by virtue of the section 2(39) of the Customs Act 1962.

18. The importer, M/s. Jyoti International Fruits had forged the Certificate of Origin by declaring the goods of Chile Origin even though he could not produce the supporting documents in relation to his claim of the origin of the goods & also failed to produce the documents related to movement of the goods from Chile to UAE. Thus, it appears the importer had tried to import the said goods vide the aforesaid bill of entry by forging the documents, thereby mis-declaring the country of origin, making the goods liable for confiscation under section 111(m) of the Customs Act 1962.
19. The importer, M/s. Jyoti International Fruits had forged the documents especially the Certificate the Origin & also failed to produce the documents related to movement of the goods from Chile to UAE. Thus the said importer tried to import the prohibited goods by virtue of Section 2(33) of the Customs Act 1962, as there is prohibition imposed by the NPPO, Ministry of Agriculture vide F. No. 18-23/2015-PP.II(e-16587) dated 07.12.2021 read with section 11 of the Customs Act 1962. Thus, it appears that the import of Kiwi Fruit vide the aforesaid bill of entry makes the goods liable for confiscation under section 111(o) of the Customs Act 1962 and also the goods to be placed under the category of Smuggled Goods by virtue of the section 2(39) of the Customs Act 1962.
20. In view of the foregoing paras, it appeared that the importer, M/s. Jyoti International Fruits had not followed the provisions of the section 46 in true sense by violating the provisions of section 46(4) & 46(4A) of the Customs Act, 1962 by mis-declaring the Certificate of origin and submitting other forged documents, which makes the importer liable for penal action under Section 112(a) & 112(b)(i) of the Customs Act, 1962. The importer, in relation to the goods imported vide the bill of Entry, supra omitted the required act mentioned under section 46 of the Customs Act, 1962 which makes the goods liable for confiscation under section 111(d), 111(m) & 111(o) of the Customs Act, 1962 by virtue of the prohibition imposed on import of said commodity from Iran by the NPPO, Ministry of Agriculture, and thus rendering themselves liable for penalty under section 112(a) & 112(b) of the Customs Act, 1962.
21. The said importer had tried to import the Kiwi Fruit apparently of Iran Origin by declaring the same in the Bill of Entry as of Chile Origin and forged the documents especially the Certificate of Country of Origin of Goods and presented the Bill of Entry with the forged supporting documents before the Customs makes the importer liable for penal action under section 114AA of the Customs Act 1962.

The importer, through his manager's statement tendered before the Customs, clearly stated that he did not care about the Country of Origin of Goods. All he was care about that he had placed the order with his supplier for the supply of Chile Origin Kiwi Fruit. From which country, the said goods is supplied by his supplier, he did not bother about to question the same. This clearly reflects his intention that he just wanted to import of Kiwi Fruit irrespective of prohibition imposed on certain country by the Government of India and irrespective of the documents provided by his supplier. Thus, in toto he was also part of the whole conspiracy formulated by the supplier in sending the Iran Origin goods of Kiwi Fruits to India apparently.

22. The Manager of M/s. Jyoti International Fruit on behalf of the importer submitted the contradictory statement which raises the suspicion on his intention. Vide the statement tendered before the competent authority of the Customs, Shri Bharatsingh had stated that the one person from the firm M/s. Jyoti International Fruit went to Dubai for the import of the goods in question and on the other hand he himself stated that there is no such correspondence carried out between the importer and supplier of which he can the submit the proof of evidence. This shows that he was well aware about the origin of the goods and had no intention to submit the correspondence carried out between both of them. This fabrication of statement and production of the forged documents for the clearance of the prohibited goods from the Kandla Port makes the importer, liable for penal action under section 114AA of the Customs Act 1962.

23. The office of Directorate of Plant Protection, Quarantine & Storage RPQS Kandla had submitted to this office vide their mail dated 14.12.2022 that the importer did not submit the country of origin's Phytosanitary Certificate and the PQ clearance given by their office, is issued after one time relaxation granted by the Joint Director of the RPQS Kandla, by using his discretionary power as granted by the PQ order 2003 dated 18.11.2003 issued by the Ministry of Agriculture, Government of India. The Importer was well aware about the payment of the fees as penalty in response to the one-time relaxation granted by the RPQS Kandla when their certificate of Origin and PSC Certificate could not be verified online and submitted the forged documents intentionally to clear the alleged prohibited goods i.e. Kiwi Fruit of Iranian Origin apparently by declaring the Country of Origin of Goods of Chile. Also, the NCTC alert suggested that the importer had previously filed 08 Bills of entry from Oct'21 till date, with an A.V. of Rs. 2.5 crore, containing fresh kiwi, majority of which has COO as Iran and there was no entry inward for 02 previous bills which had COO as Chile for kiwi. In the instant case, the importer has also port hopped from Nhava Sheva to Kandla and declared the COO as Chile, also the previous consignments of the said importer were kiwi and kiwi has been generally imported from Iran in India. Since, Jebel Ali is in close proximity to Iran, therefore there are all reasons to believe that importer had malafide intention to import the prohibited goods i.e. Iranian origin Kiwi which are prohibited by the Ministry of Agriculture as discussed supra. It further appeared that the intentional act of suppression of facts by the said importer while filing the

documents for the BE No. 2903994 dated 15.10.2022 before the customs render himself liable for the penal action under section 114AA & personally liable for penalty under section 117 of the Customs Act, 1962.

24. 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.

25. The importer had shown his wrong intention for the clearance of the alleged prohibited goods i.e. Kiwi Fruit of Iran Origin under the hindsight of one time relaxation granted by the RPQS Kandla in spite of the Certificate of Origin of Goods and PSC Certificate could not be verified by the Office of RPQS Kandla. Further, the authorized person's contrast statement while tendering the statement before the competent authority clearly show the malafide intention of the importers in respect of the clearance of alleged prohibited goods i.e. Kiwi Fruit of Iranian Origin under the aforesaid bill of entry from the Kandla Port.

26. Thus, in view of the above suppression of facts by the importer and shown of his malafide intention, it appears that mis-declaration in documents has been done to circumvent the prohibition imposed vide letter F. No. 18-23/2015-PP.II (e-16587) dated 07.12.2021 issued by National Plant Protection Organization (NPPO) under the Agriculture Ministry and thus rendered the goods i.e. Kiwi Fruits of the BE No. 2903994 dated-15.10.2022 having gross weight 80850Kgs and valued at Rs. 41,18,798.07/- (Rupees Forty One Lakhs Eighteen Thousands Seven Hundred Ninety Eight and Seven Paisa) liable for confiscation under Section 111(d), Section 111(m) and Section 111(o) of the Customs Act, 1962.

27. 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) of the Customs Act, 1962 has rendered himself liable for penalty under section 112(a) & 112(b) (i), 114AA, and 117 of the Customs Act, 1962.

SHOW CAUSE-

28. Accordingly a Show Cause Notice was issued to M/s Jyoti International Fruits, Plot No 12, Bhola Road, Meerut, Uttar Pradesh-250002 IEC – FVUPP1057G is hereby 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 declared description as country of origin of the subject goods i.e. Kiwi Fruits of Chile Origin should not be rejected and the goods should not be considered as Kiwi Fruit of Iranian Origin,
- ii. The goods having declared value of Rs. 41,18,798.07/- (Rupees Forty One Lakh

Eighteen Thousand Seven Hundred Ninety Eight and Seven Paisa) 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, and

- iii. Penalty should not be imposed upon them under Section 112(a) & 112(b), 114AA and 117 of the Customs Act, 1962

WRITTEN SUBMISSION-

- 29. No written submission has been submitted by M/s Jyoti International Fruits till date.

PERSONAL HEARING-

- 30. Opportunities of personal hearing were provided to the noticee on 10.12.2024, 26.12.2024 and 11.03.2025 on their available email ID as well as the postal address available with this office. However, the noticee neither appeared for personal hearing nor made any submission in the matter.

DISCUSSION AND FINDINGS

31. I have carefully gone through the Show Cause Notice, all the Relied upon Documents and all the evidences available on record.

32. It is pertinent to note that the noticee i.e. M/s Jyoti International Fruits has 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 16.11.2023 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.

33. 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.

34. 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:-

(a) "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.).

- (b) "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.)
- (c) Kumar Jagdish Ch. Sinha Vs. CCE, Calcutta-2000 (124) E.L.T. 118 (Cal.)
- (d) Saketh India Ltd. Vs. U.O.I.-2002 (143) E.L.T 274 (Del.)
- (e) Devi Dayal Vs. U.O.I.-2002 (144) E.L.T. 502 (Del.) maintained in 2003 (151) E.L.T. A288 (S.C.)
- (f) Gopinath Chem. Tech Ltd Vs. C.C.E., Ahmedabad-II-2004(171) E.L.T.412(Trib. Mumbai)
- (g) F N Roy Vs. C.C., Calcutta-1983 (13) E.L.T. 1296 (S.C.)

35. It is observed that, M/s. Jyoti International Fruits, had filed a Bill of Entry No. 2903994 dated 15.10.2022 Kandla port for clearance of imported goods i.e. "Kiwi Fruit". The detail of bill of entry is as below:

(Table-A)

Sr. No.	Bill of Entry No. and Date	Description of Goods	Declared Value of the goods (in Rs.)
1.	2903994 dated 15.10.2022	Kiwi Fruit (CTH-08105000)	41,18,798.07/-

36. It is observed that, the importer classified these goods under tariff item 08105000 and declared *country of origin as Chile*. Based on detailed risk analysis, the NCTC had identified the above Bill of entry as risky consignment in relation to mis-declaration/concealment & suspicious certificate of Country of Origin of Goods.

37. It is observed that, the Bill of Entry No. 2903994 dated 15.10.2022 was containing "kiwi fruits" with the country of origin being Chile and port of loading being Jebel Ali (AEJEA).

38. It is observed that, the importer had previously filed 08 bills of entry from Oct'21 till date, with an A.V. of over Rs. 2.5 Crore, containing Fresh kiwi, majority of which has Country of origin as Iran. There was no entry inward for 02 previous bills which had country of origin as Chile for kiwi.

39. It is observed that, in response to the NCTC Alert received regarding the

possibility of the *dubious certificate of Country of Origin*, summons were issued to the said importer. Shri Bharatsingh Kishansingh Rajput, Manager, M/s. Jyoti International Fruits, in his statement dated 07.11.2022 (RUD-1), wherein he inter-alia admitted that they don't have any agreement with their supplier. They had raised the purchase order of 8085 boxes for the Kiwi Fruit with the country of origin as Chile. However, on being repeatedly asked, M/s. Jyoti International Fruit failed to submit the Certificate of Country of origin issued from Chile country or the documents for the movement of goods from Chile to UAE.

40. It is further observed that, Shri Bharatsingh Kishansinh Rajput, Manager of M/s. Jyoti International Fruits, IEC(FVUPP1057G) in his statement dtd. 09.12.2022 admitted that they had raised the purchase order of Kiwi Fruit of Chile Origin and on asking the exporter about the documents related to the movement of cargo of Kiwi Fruit from Chile to UAE, the exporter (M/s. Anusaya Fresh Fruits & Vegetables LLC, P.O. Box no 10166, Rasal Khor, Dubai, UAE) was not cooperating with them and denied to give such details citing the same as their personal matter.
41. It is observed that, during the course of statement tendered by the Shri Bharatsingh Rajput, he inter-alia stated that he had no idea about the country of origin of the goods even though he had raised the purchase order of Kiwi Fruit of Chile Origin, which clearly shows that he did not bother about the origin of the goods whether it is of Chile Origin or any other country origin. This was clearly a violation of Section 46 of the Customs Act, 1962 under which the importer had to ensure the correctness of all the details provided to the Customs while filing the Bill of Entry at any port.
42. It is observed that, during the course of statement, Shri Bharatsingh Rajput submitted the self-certified copy of the Purchase Order, Certificate of country of origin issued by the Dubai Chamber of Commerce, Quarantine Clearance/provisional quarantine clearance certificate dated 31.10.2022 issued by the Directorate Of Plant Protection, Quarantine & Storage RPQS Kandla, Ministry Of Agriculture & Farmers Welfare Department of Agriculture & Farmers Welfare, GOI having registration No IRO19KAN2022003068, copy of NOC from the Food Safety and Standards Authority of India, Phytosanitary certificate(PSC)of Re-Export etc. to the Custom House, Kandla.
43. It is further observed that, from the status of the PQ submitted by the RPQS Kandla, the PSC (Phytosanitary certificate) of declared country Chile origin was not submitted and the Certificate of PSC submitted by the importer could not be verified, so one time relaxation was granted under Chapter VI of PQ Order, 2003. This also validates that the importer used the forged documents of PSC to import the KIWI Fruit which clearly violates the provision of Section 46 of the Customs Act, 1962.
44. It is observed that, upon receipt of the mail from the RPQS Kandla, Office of Directorate of Plant Protection, Quarantine & Storage, letter dated 14.12.2022 from the SIIB office was issued to the said Importer for the submission of the Certificate of

Country of Origin and Phytosanitary Certificate issued by the competent authority of Chile. The importer failed to submit the Certificate of Country of Origin and Phytosanitary Certificate issued by the competent authority of Chile. Accordingly, summons dated 31.01.2023 & 22.03.2023 were issued for the submission of the aforesaid documents which were asked for.

45. It is noticed that that there is prohibition imposed by the NPPO, Ministry of Agriculture on the import of Kiwi Fruit of Iran Origin vide F.No.18-23/2015-PP. II(e-16587) dated 07.12.2021 read with section11 of the Customs Act,1962.

CONFISCATION OF GOODS-

46. It is observed that, the importer has suppressed the facts and has shown his malafide intention and the mis-declaration in documents has been done to circumvent the prohibition imposed vide letter F. No. 18-23/2015-PP.II (e-16587) dated 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. 2903994 dated-15.10.2022 having gross weight 80850Kgs and valued at Rs. 41,18,798.07/- (Rupees Forty One Lakhs Eighteen Thousands Seven Hundred Ninety Eight and Seven Paisa) liable for confiscation under Section 111(d), Section 111(m) and Section 111(o) of the Customs Act, 1962.

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

47. It is observed that, the importer i.e. M/s. Jyoti International Fruits was well aware about the origin of the goods and had no intention to submit the correspondence carried out between both of them. This fabrication of statement and production of the forged documents for the clearance of the prohibited goods from the Kandla Port renders the importer, liable for penal action under section 114AA of the Customs Act 1962.

PENALTY UNDER SECTION 112(a), 112(b) and 117 OF THE CUSTOMS ACT, 1962-

48. Further, the intentional act of suppression of facts by M/s. Jyoti International Fruit while filing the documents for the B.E. No. 2903994 dated 15.10.2022 before the customs has rendered the goods liable for confiscation under Section 111(d), 111(m) and 111(o) of the Customs Act, 1962. Their acts have rendered them liable for the penal action under section 112(a) & 112(b) of the Customs Act, 1962.

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

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

- i. I reject the declared description as country of origin of the goods imported by M/s. Jyoti International Fruit of the subject goods i.e. Kiwi Fruits of Chile Origin and order to consider the goods as Kiwi Fruit of Iranian Origin.
- ii. I order for absolute confiscation of the goods imported by M/s. Jyoti International Fruit having declared value of Rs. 41,18,798.07/- (Rupees Forty One Lakh Eighteen Thousand Seven Hundred Ninety Eight and Seven Paisa) as detailed in Table - A above, under Section 111(d), 111(m) & Section 111(o) of the Customs Act,1962.
- iii. I impose Penalty of Rs.20,00,000/- (Rupees Twenty Lakhs only) upon M/s. Jyoti International Fruit under Section under Section 112(a)(i) of the Customs Act, 1962.
- iv. I impose Penalty of Rs. 20,00,000/- (Rupees Twenty Lakhs only) upon M/s. Jyoti International Fruit under Section under Section 112(b)(i) of the Customs Act, 1962.
- v. I impose Penalty of Rs.40,00,000/- (Rupees Forty Lakhs only) upon M/s. Jyoti International Fruit under Section under Section 114AA of the Customs Act, 1962.
- vi. I impose Penalty of Rs.4,00,000/- (Rupees Four Lakhs only) under Section under Section 117 of the Customs Act, 1962 upon M/s. Jyoti International Fruit.

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

**(Rakesh Kumar Jain),
Additional Commissioner of Customs**

F. No. GEN/ADJ/ADC/2528/2024-Adjn-O/o Commr-Cus-Kandla

DIN: 20250371ML00002252DC

To:

M/s. Jyoti International Fruits, Plot No 12,
Bhola Road, Meerut, Uttar Pradesh-250002

Copy To-

- (a) The Deputy/Assistant Commissioner(SIIB/RRA/TRC/EDI) for necessary action.
- (b) Guard File