

 <p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: adj-mundra@gov.in</p>	 <p>અસ્ત્રાદીવા અમૃત મહોત્સવ</p>
A. File No.	: GEN/ADJ/COMM/11/2024-Adjn-O/o Pr Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM- 44 - 24-25
C. Passed by	: K. Engineer, Principal Commissioner of Customs, Customs House, AP & SEZ, Mundra
D. Date of order and Date of issue:	: 11.02.2025. 11.02.2025.
E. SCN No. & Date	: SCN F. No. GEN/ADJ/COMM/11/2024-Adjn-O/o Pr Commr-Cus-Mundra, dated 13.02.2024.
F. Noticee(s) / Party / Importer	: 1. M/s. Kesar Spices, 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad - 380004. 2. Shri Sureshkumar Bhatt, proprietor of M/s. Kesar Spices, 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad - 380004.
G. DIN	: 20250271MO000000CE9E

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

3. "केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004"

"Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004."

4. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

5. उक्त अपील के साथ - / 1000 रूपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रूपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रूपये का शुल्क टिकट लगा होना चाहिए, जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बैंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

6. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- I, न्यायालय शुल्क अधिनियम, 1870 के मद्दसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

7. अपील ज्ञापन के साथ छूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

8. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

9. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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.

FACT OF THE CASE IN BRIEF:

M/s Kesar Spices, 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad - 380004 (IEC - 0813008875) a proprietorship firm owned and controlled by one Shri Suresh Dharmashankar Bhatt, is engaged in the trading business of Dry fruits and Spices i.e. specifically Chilies, they were procuring the goods for trading both domestically as well as through imports from overseas suppliers.

2. A specific Information received by the Directorate of Revenue Intelligence, Zonal Unit Mumbai, Mumbai, subsequently forwarded on to the Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, Ahmedabad which was further developed by the Directorate of Revenue Intelligence, Zonal Unit Ahmedabad, Ahmedabad, indicated that M/s. Kesar, is engaged in fraudulent import of Walnuts (In-shell) of United State of America (USA) origin by mis-declaring the country of origin as Afghanistan, in order to wrongly avail the exemption of Customs Duty as available under Notification No. 99/2011-Cus dated 09/11/2011 in imports into India with the connivance of Afghanistan firm/company to defraud the Government of applicable Customs duty. The manipulation regarding the Country of Origin was carried by their associates based in Afghanistan/Pakistan. Thus, the country of origin of goods declared for the import consignment does not reflect the correct country of origin of goods i.e. Walnuts (In-shell) imported by the Indian importer viz. M/s. Kesar Spices, Ahmedabad.
3. Notification No. 99/2011-Cus Dated 09/11/2011 exempts all goods other than those mentioned in the Annexure to the notification, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from a country listed in Appendix to the notification including Islamic Republic of Afghanistan, subject to the conditions that the importer proves to the satisfaction of the Customs authorities, in accordance with the Rules for determination of origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), 2006, published vide notification No 75/2006-Customs, (NT) dated 30/06/2006, that the goods in respect of which the benefit of exemption is claimed are of the origin of the country listed in the Appendix to the Notification.
4. The Walnuts (In-shell) when imported from USA, the Basic Customs Duty (BCD) leviable on such imports at relevant time was @120% (w.e.f. 16/06/2019 and prior to that @100%) of the Assessable value and Social Welfare Charge @10% of BCD and the Integrated Goods & Service Tax (IGST) @ 5% on the value including assessable value, Basic Customs Duty and Social Welfare Charge which works out to 11.6% of the assessable value. The total effective duty on Walnuts (In-shell) when

imported from USA was thus 143.6% on the assessable value at relevant time. The Notification No. 99/2011-Cus Dated 09/11/2011 exempts the goods from the whole of the duty of customs leviable thereon on the basis of SAFTA certificate to be produced before the Customs Authorities when the goods imported from a country listed in Appendix to the notification. Thus, with the SAFTA benefits, the effective duty payment would be only 5% IGST on the Assessable value.

5. Based on the above information, goods imported by M/s. Kesar Spices, Ahmedabad vide Bill of Entry No. 3997006 dated 09/07/2019 filed at Mundra Port were examined under Panchnama dated 10/07/2019 and 08/08/2019 in the presence of independent Pancha witnesses, Mr. Bhegani Shahnawaj J, representative of appointed Customs Broker of M/s. Kesar Spices, Ahmedabad and representative of custodian M/s. Mundra CFS, Mundra. During the course of the examination various incriminating evidences were found in form of Paper Slips/paper Tags stitched/ attached on Bags or found inside the bags containing Walnuts (In-shell) clearly indicated that the goods are of USA origin. During the Panchnama proceedings, the officers captured photographs of the goods, bags, Slips inside and outside the bags and some of those photographs were appended in the body of the Panchnama. The goods examined were detained under Panchnama proceedings under the reasonable belief that same were liable to confiscation under the provisions of the Customs Act, 1962 and were handed over to the Custodian for safe custody. The details of Bill of Entry and goods are as below:

S. No	Bill of Entry No & Date	Description of Goods	Contain er No.	Supplier's Invoice No.	Ass. Value of Goods
1	3997006 dated 09/07/2019	825 Bags of Walnuts in Shell Pkd in 25 Kg PP bags same as per invoice	WHLU54 52895	1555/19 dated 14/05/2021	Rs. 59,61,440/-
		825 Bags of Walnuts in Shell Pkd in 25 Kg PP bags same as per invoice	PCIU820 5861	1556/19 dated 14/05/2021	

6. Simultaneous searches were also conducted at (1) the residence premises of the proprietor of M/s. Kesar Spices situated at 303, 3rd Floor, Sukan Orchid, Opp. Swagat Bungalow, New C.G. Road, Chandkheda, Ahmedabad -380005 and (2) the office premises of M/s. Kesar Spices situated at 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad – 380004.

6.1 During the verification at the residence premises it was learnt that address was incomplete and on discreet inquiry it was learnt that Shri Suresh Bhatt might have shifted his residence from the said residential society.

6.2 Search was carried out at the office premises of M/s. Kesar Spices situated at 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad-380004 under Panchnama dated 10/07/2019 and in presence of independent Panch witnesses. The DRI officers and Panchas initially found the premises of M/s. Kesar Spices locked and on inquiry with Shri Dineshkumar Chunilal Joshi (one of the Panch witness) having his office adjacent to M/s. Kesar Spices, Shri Dineshkumar informed the officers that Shri Suresh Bhatt, owner of M/s. Kesar Spices seldom opens the said premises. Shri Suresh Bhatt, owner of M/s. Kesar Spices contacted the officers on mobile and informed the officer that he will come to office. The office premises was searched in presence of two independent Pancha witnesses and Shri Suresh Bhatt after arrival of Shri Suresh Bhatt at office premises. During the systematic search of the premises, officers did not find any documents related to import. Further, during panchnama proceedings Shri Suresh Bhatt also informed that the supplier of Afghanistan Mr. Ashmat (probably owner of supplier firm M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan) during final discussion about the business had informed him that they (the supplier of Afghanistan) will arrange the documents showing Country of Origin as Afghanistan, whereas the goods will be of USA origin. Shri Suresh Bhatt also informed before the Panch witnesses that Mr. Ashmat will first import the consignment of Walnuts from USA to Karachi, Pakistan and change the packing and finally export the same to India with manipulated documents showing Country of Origin as Afghanistan. Shri Suresh Bhatt also informed before the Pancha witnesses that he had also imported one consignment of Walnuts (In-shell) during May, 2019 vide Bill of Entry No. 3385021 dated 25/05/2019 from the same supplier. The officers proceeded to withdraw 02 mobile phones used by Shri Suresh Bhatt on reasonable grounds that the said mobile phones contain important data relevant to DRI inquiry under proper Panchnama and in sealed manner in presence of Panch witnesses.

7. M/s. Kesar Spices, Ahmedabad vide their letter dated 27/07/2019 voluntarily submitted the Demand Draft No. 009482 dated 24/07/2019 amounting to Rs. 87,05,435/- issued by the Axis Bank Ltd, Branch- Chandkheda, Ahmedabad for payment of Duty, applicable interest and Penalty in respect of late filing of Bill of Entry in acceptance of their mistake committed regarding mis-declaration of Country of Origin as Afghanistan, as goods imported were of USA origin. Further, M/s. Kesar Spices, Ahmedabad vide said letter also requested for

release of their goods as same were of perishable nature. The said Demand Draft was deposited in Bank of Baroda for payment of the differential Customs duty amounting to Rs. 85,60,628/- along with interest of Rs. 59,807/- and Penalty of Rs. 85,000/- (for late filing the BE) vide TR-6 Challan No. KS/DRI/01/2019 dated 26/07/2019 towards their liability of payment of Customs duty, Interest and penalty for late filing of Bill of Entry.

SEIZURE AND PROVISIONAL RELEASE OF IMPORTED GOODS:

8. On the basis of the evidences in form of Paper Slips/paper Tags stitched/attached on Bags or found inside the bags containing Walnuts (In-shell) recovered during the examination of goods and the admissions of the Proprietor Shri Suresh Dharmashankar Bhatt during the Panchnama proceeding on 10/07/2019, it appeared that the goods were of USA origin, however the importer had mis-declared the country of Origin as 'Afghanistan' to wrongly avail the benefit under Notification No. 99/2011-Cus dated 09/11/2011. Accordingly, the goods viz. 41250 Kgs of "WALNUTS IN SHELL" packed in 1650 Bags, totally valued at Rs. 59,07,011/- (Rupees Fifty Nine Lakhs Seven Thousand and Eleven only), which was detained under Panchnama dated 10/07/2019 were placed under seizure vide Seizure Memo issued from F. No. DRI/AZU/CI/ENQ-83(INT-26/2019)/2019 dated 26/07/2019, under reasonable belief that the same were liable to confiscation under provisions of Customs Act, 1962.

9. A letter F. No. DRI/AZU/CI/ENQ-83(INT-26/2019)/2019 dated 29/07/2019 was issued by the Pr. Additional Director General, DRI, Ahmedabad Zonal Unit to the Principal Commissioner of Customs, Adani Port & SEZ, Mundra conveying no objection for provisional release of the goods seized under above said Seizure Memo dated 26/07/2019 in terms of Board's circular No. 35/2017 – Customs dated 16/08/2017.

10. The Assistant Commissioner of Customs, O/O the Pr. Commissioner of Customs, Mundra Port & SEZ, Mundra vide letter F. No. VIII/48-534/IMP/Misc/Gr-I/18-19 dated 06/08/2019 informed M/s. Kesar Spices, Ahmedabad that the Pr. Commissioner of Customs, Mundra Port & SEZ, Mundra has directed to furnish the Bond of full value of seized Goods and Bank Guarantee of Rs. 85 Lakhs for provisional release of goods covered under Bill of Entry No. 3997006 dated 09/07/2019. Aggrieved by the said provisional release Order dated 06/08/2019, M/s. Kesar Spices preferred appeal before the Hon'ble CESTAT, Ahmedabad vide Application No. 11999 of 2019 to quash and set aside the Provisional release order. The Hon'ble CESTAT vide Final Order No. A/11829/2019 dated 27/09/2019 has reduced the amount of Bank Guarantee from Rs. 85 Lakhs to 25% value of the

seized goods. The Hon'ble CESTAT, Ahmedabad allowed the Appeal partly and modified the Provisional Release Order of the Pr. Commissioner of Customs, Mundra Port & SEZ, Mundra. The Deputy Commissioner of Customs (Import Section, Gr.-I), O/O the Pr. Commissioner of Customs, Mundra Port & SEZ, Mundra vide letter F. No. VIII/48-1268/GR-I/Kesar Spices/MCH/19-20 dated 13/11/2019 addressed to the Deputy Commissioner of Customs (Dock Examination), Customs House Mundra informed that as per CESTAT Order No. A/11829/2019 dated 27/09/2019 M/s. Kesar Spices has submitted PD Bond for full amount i.e. Rs. 59,07,011/- and Bank Guarantee No. 007BF0119306001 dated 02/11/2019 valid upto 01/11/2021 for Rs. 14,76,753/- (25% of the differential duty). Further, vide said letter dated 13/11/2019 the Deputy Commissioner of Customs (Dock Examination), Customs House Mundra was also requested for provisional release of the seized goods (Walnut Inshell) imported vide B/E No. 3997006 dated 09/07/2019.

FURTHER ENQUIRY:

11. Summons dated 24/07/2019, 05/08/2019, 13/08/2019, 19/08/2019 and 29/08/2019 were issued to Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices directing him to appear on 26/07/2019, 08/08/2019, 19/08/2019, 29/08/2019 and 03/09/2019 respectively in person for the purpose of recording his statement under Section 108 of the Customs Act, 1962 and to produce required documents. However, the Summons issued were not honoured and he did not appear in response to the summons issued to him. In response to above said Summons issued to Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices vide letters 26/07/2019, 07/08/2019, 19/08/2019 and 03/09/2019 requested for postponement of date of appearance citing different reasons every time.

ENQUIRY WITH SHIPPING LINE AGENT AND CHA:

12. Statement of Shri Aakash Nair, Senior Executive of M/s. Winwin Maritime Limited, 'Shyam Paragon', 1st Floor, DEZ-South/61A, Near Rotary Bhawan, Gandhidham (Kutch), Gujarat-370201 was recorded on 21/10/2019 under Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that:

12.1 Their company M/s. Winwin Maritime Limited was a Non-Vessel Owning Common Carrier (NVOCC) engaged in providing Containers to the Importers and Exporters and coordinate with Shipping Lines and Customs Authority to file Import General Manifest (IGM) and Export General Manifest (EGM) at gateway ports and Freight Forwarding. Being a Senior Executive of M/s. Winwin Maritime Limited he was looking after import documentation like filing Import General Manifest (IGM),

issuance of local charges invoices, delivery order, and coordination with overseas Shipping Line Agents; that from their office at Gandhidham handled the Non Vessel Owning Common Carrier (NVOCC) activities at the ports of Kandla and Mundra;

12.2 On being asked regarding business with M/s. Kesar Spices Ahmedabad, he stated that they were Authorized agent for Shipping Line M/s. Allied Container Line and they undertook the Clearances of their containers at the Mundra/Kandla Port. They had been entrusted with the clearances of their containers at the Mundra Port, as their Agent. On being asked he stated that they received (through email) Bills of Lading issued at the load Port from M/s. Allied Container Line to file IGM including the BL Nos. ACL/KHI/MUN-1447/19 dated 23/05/2019 and ACL/KHI/MUN-1765/19 dated 27/06/2019 and on the basis of the said BL (s) they had filed the IGM on respective dates at Adani Port, Mundra before the jurisdictional Customs Authority. The said BL Nos. ACL/KHI/MUN-1447/19 dated 23/05/2019 and ACL/KHI/MUN-1765/19 dated 27/06/2019 were issued in the Shipper name M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan and wherein the consignee was mentioned as M/s. Kesar Spices situated at 116, First Floor, Madhukant Complex- 2, Near Hindi School, Bardolpura, Madhupura, Ahmedabad-380004.

12.3 On being asked he produced the documents like Bills of Lading, Copies of Invoices of M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan, copies of Country-of-Origin certificate, Phytosanitary Certificates (issued by Afghanistan Authority), etc. produced before M/s. Allied Container Line at Karachi port at the time of loading of Cargo at Karachi.

12.4 He was shown the Bills of Lading BL Nos. ACL/KHI/MUN-1447/19 dated 23/05/2019 and ACL/KHI/MUN-1765/19 dated 27/06/2019 placed in the documents produced by him and he was also shown the Phytosanitary Certificates No. 160042 dated 14/05/2019, 1600423 dated 14/05/2019, 202493 dated 09/05/2019, 202494 dated 09/05/2019 and 202981 dated 13/05/2019 issued by the Plant protection and Quarantine Department, Ministry of Agriculture, Irrigation and Livestock, Islamic Republic of Afghanistan. He had perused the same and he found that the port of Loading in the Bills of Lading was mentioned as Karachi, accordingly it appeared that the Containers were loaded from Karachi Port. Further, on perusal of Phytosanitary Certificates he found that the fumigation was done at Kandahar, Afghanistan, however Container numbers were not mentioned in the said Phytosanitary Certificates.

12.5 On being asked he stated that after receiving the letter from DRI with a direction to submit the documents they had contacted the persons of M/s. Allied Container Lines at Karachi and asked to forward the documents submitted by the

shipper at Load Port at Karachi/Kandahar, in reference to that M/s. Allied Container Lines, Karachi forwarded the documents submitted by the shipper's agent at Karachi port. M/s. Allied Container Lines, Karachi had also informed that M/s. Allied Container Lines, Karachi had provided the containers mentioned in the Bills of Lading at Karachi only and the cargo was stuffed from the Badaruddin Yard, Karachi and loaded from Karachi Port. He further stated that M/s. Allied Container Lines, Karachi had also informed that the goods were in transit from Karachi, Pakistan and initially loaded from Afghanistan; however, M/s. Allied Container Lines, Karachi had not provided any relevant supporting documents substantiating the fact. On being asked to provide the copy of a Bill of Lading/ Airway bill or corresponding transport document issued from the Afghanistan for transportation of goods from Afghanistan to Karachi, Pakistan he stated that they had requested M/s. Allied Container Lines, Karachi to provide the said documents, however M/s. Allied Container Lines, Karachi had not provided the said documents.

12.6 On being asked he stated that they will contact M/s. Allied Container Lines, Karachi and will pursue to get other relevant records at the earliest and will submit the same as and when they receive.

13. A statement of Shri Hemant Narayanji Palan, Partner of M/s. Ajay Clearing Enterprise, 36, Anam Niwas, M. G. Road, Mulund (W), Mumbai – 400080 was recorded on 20/01/2020 under Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that:-

13.1 He was partner of M/s. Ajay Clearing Enterprise, Mumbai. The other partner of M/s. Ajay Clearing Enterprise, Mumbai was his wife Smt. Meena Hemant Palan; that he was looking after overall work of his firm and documents for import & export clearance were prepared by various persons working in his firm under his supervision. M/s. Ajay Clearing Enterprise, Mumbai was engaged in providing services of Custom House Agent (Sea/Air); that they from their office at Gandhidham handle the CHA activities at the ports of Mundra; that he entrusted the work of business promotion to two cargo handling agents namely M/s. Kandla Logistics, Gandhidham and M/s. Safesea Logistics Pvt. Ltd, Ahmedabad; that they negotiate with the prospective clients and after finalization of the rates for clearing call for the documents for filing the Bill of Entry/Shipping Bill. The documents so received were handed over to respective office for preparation of Check-list and after approval of the Check-list by the client/importer they proceeded with the filing of Bill of Entry/Shipping Bill online through ICEGATE. On being asked as to how the checklist was forwarded to client/importer, he stated that the Check-list was forwarded through email and the confirmation of the same was also received through email or on mobile phone. He also clarified that in Mundra Port clients were dealt

by M/s. Kandla Logistics, Gandhidham (a Cargo handling agent) for their firm M/s. Ajay Clearing Enterprise, Mumbai.

13.2 On being asked regarding business with M/s. Kesar Spices, Ahmedabad he stated that they undertook the clearance of cargo of M/s. Kesar Spices, Ahmedabad through M/s. Kandla Logistics, Gandhidham, as their Customs House Agents. They had been entrusted with the clearances of their cargo at the Mundra Port. On being asked he stated that they had cleared two consignments of M/s. Kesar Spices, Ahmedabad. They received information through telephone/ email from their client M/s. Kandla Logistics, Gandhidham to handle the clearance of the cargo i.e. Walnuts In-shell of M/s. Kesar Spices, Ahmedabad at Mundra Port, M/s. Kandla Logistics, Gandhidham had forwarded IGM inward No., Commercial Invoice, Packing List, Bill of Lading, Certificate of Origin, Phyto Sanitary Certificate, Transit Certificate, Indemnity Bond, KYC form of M/s. Kesar Spices, Ahmedabad for clearing of goods being imported by M/s. Kesar Spices, Ahmedabad. On the basis of the documents received, they had prepared check list and forwarded the same to their client M/s. Kandla Logistics, Gandhidham for further confirmation/ approval from the importer. After receiving confirmation from M/s. Kandla Logistics, Gandhidham they had filed Bill of Entry through ICEGATE portal. On being asked, he stated that they had no direct contact with the clients of M/s. Kandla Logistics, Gandhidham therefore they had not raised any invoice to M/s. Kesar Spices, Ahmedabad.

13.3 On being asked about the Bill of Entry No. 3997006 dated 09/07/2019 filed at Mundra, he stated that the copies of Commercial Invoice, Bill of Lading, Certificate of Origin, Phyto Sanitary Certificate were received in their office on 28/06/2019 by Email through M/s. Kandla Logistics, Gandhidham. M/s. Kesar Spices, Ahmedabad had first forwarded the documents to M/s. Kandla Logistics, Gandhidham and same were forwarded to them (M/s. Ajay Clearing Enterprise) for filing checklist before the Customs. After generating checklist ('Flat file') in software M/s. Kandla Logistics, Gandhidham forwarded them said 'Flat file' to generate checklist. They reverted the said generated check-list to M/s. Kandla Logistics, Gandhidham for getting approval from M/s. Kesar Spices, Ahmedabad. M/s. Kandla Logistics, Gandhidham after getting due approval from M/s. Kesar Spices, Ahmedabad had forwarded the checklist to them for final submission before the Customs. They had also received the original documents by hand at Mundra in duplicate from M/s. Kesar Spices through M/s. Kandla Logistics. They submitted one set of documents to Customs authorities at the time of assessment for their record and returned second set of documents to M/s. Kandla Logistics after all formalities being completed.

13.4 He was shown the panchnama dated 10/07/2019 drawn at the M/s. Mundra CFS, Mundra wherein goods imported under Bill of Entry No. 3997006 dated 09/07/2019 were examined in the presence of independent Pancha witnesses, Mr. Bhegani Shahnawaj J, H-Card Holder, representative of appointed Customs Broker of M/s. Kesar Spices, Ahmedabad and representative of custodian M/s. Mundra CFS, Mundra. During the course of the examination various incriminating evidences were found in form of Paper Slips/paper Tags stitched/ attached on Bags or found inside the bags containing Walnuts (In-shell) clearly showing the goods were of USA origin. After going through the same carefully he put his dated signature on last page of it in token of having agreed with the same. He stated that they were unaware about the actual country of origin of the goods and on the basis of the copies of the documents/original documents received by them from M/s. Kesar Spices, Ahmedabad through M/s. Kandla Logistics, Gandhidham, they filed the Bill of Entry. Further, he stated that M/s. Kesar Spices, Ahmedabad was a regular client of M/s. Kandla Logistics, Gandhidham since last 04-05 years and M/s. Kandla Logistics, Gandhidham were handling their cargo like container de-stuffing, Customs Examination, Phyto clearance, FSSAI sampling and delivery of cargo at port. M/s. Kandla Logistics, Gandhidham had entrusted the work of Customs clearance of M/s. Kesar Spices, Ahmedabad to them and after due verification of KYC they accepted the customs clearance work of M/s. Kesar Spices, Ahmedabad at Mundra port.

13.5 On being asked he stated that in addition to consignment of 'Walnuts In-shell' imported Bill of Entry No. 3997006 dated 09/07/2019, they had also handled one other consignment of imported Walnuts In-Shell of M/s. Kesar Spices in past in the month of May, 2019. The similar sets of documents were provided by M/s. Kandla Logistics, Gandhidham to clear the said consignment of cargo in the month of May, 2019. On the basis of the said documents, they had filed the Bill of Entry for assessment and clearance of cargo. That their employee Mr. Shahnawaz had coordinated with M/s. Kandla Logistics and prepared 'Flat File' to generate Checklist; that they forwarded the Checklist to M/s. Kandla Logistics for final approval. After due approval from M/s. Kandla Logistics they filed the final Bill of Entry through ICEGATE portal. Mr. Shahnawaz also collected original documents from M/s. Kandla Logistics and submitted the original documents along with Checklist to Customs Authority for assessment and clearance of Cargo. Further, on being specifically asked he stated that they had received Bill of Lading, Commercial Invoice and SAFTA certificate (COO) through email dated 24/05/2019 to file checklist; that their employee Mr. Shahnawaz had prepared the checklist/'flat file' in software namely (Royal Impex) and got approval from M/s. Kandla Logistics and thereafter he had filed Bill of Entry.

13.6 On being asked about the documents asked in summons dated 07/01/2020, he submitted 1 file containing page no. 1 to 62 containing documents like E-mail conversation, import documents and Bank Statements.

14. A statement of Shri Mohmad Tariq Chaudhary, Partner of M/s. Kandla Logistics, Office No 3, Plot No 130, Sector 8, Gandhidham 370201 was recorded on 21/01/2020 under Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that:-

14.1 He was partner in M/s. Kandla Logistics, Gandhidham; that the other partner of M/s. Kandla Logistics, Gandhidham was his wife Smt. Tayyaba Chaudhary; that he was looking after overall work of his firm viz. handling of import/export cargo, freight forwarding for export. On being asked about the business activity of his firm M/s. Kandla Logistics, he stated that their firm was engaged in providing services of forwarding/freight forwarding and handling of import & export cargo at Mundra port. that he looked after the business promotion and client handling & negotiate with the prospective clients and after finalization of the rates for handling of the cargo they call for the documents viz. **1)** for Import: Bill of Lading, Commercial Invoice, Packing List, Certificate of Origin, Phyto Sanitary Certificate & Fumigation Certificate etc. **2)** for Export: Commercial Invoice & Packing List. He stated that they also called for KYC documents & authority letter in favor of CHA license holder & handling agent from the new client (importer/exporter); that at initial stage they called the documents via Email/WhatsApp and on receipt of the said documents they coordinated with the CHA firm. On their request and after verification of documents the employee of CHA firm prepared the checklist and after getting approved from them/their clients, CHA firm filed Bill of Entry/Shipping Bill for assessment and clearance of cargo. They also received original documents in duplicate through courier from their clients; that they forwarded/handed over the documents to CHA firm. The CHA firm submitted one set of documents to Customs authorities at the time of assessment for their record and return second set of documents to them/their client after all formalities being completed. On being asked as to how the documents were forwarded to CHA, he stated that they forwarded the scanned copies of documents received from the clients to their CHA through Email and they coordinated with local employee of CHA to prepare the checklist. Further, they received confirmation of filing of Bill of Entry from CHA through email. They also received original documents for import/export of goods through Courier or by hand from their clients, which they further submitted to their CHA to produce before the Customs Authority at the time of assessment. On being asked he stated that their firm had major clients namely M/s. ASP Sena Traders, Bhachau, M/s. Kesar Spices, Ahmedabd, M/s Laxmi Traders, Unjha, M/s.

Shreeji Trading, Dahod, M/s. Shreeji Enterprise, Rajkot etc. and they used the services of CHA namely M/s. Ajay Clearing having CHA Code AAAFA2892ACH004.

14.2 On being asked regarding M/s. Kesar Spices, Ahmedabad he stated that M/s. Kesar Spices, Ahmedabad was their regular client for last 4-5 years; that they used to handle groundnuts for export of M/s. Kesar Spices, Ahmedabad in 2015 & also handled imported watermelon seeds in 2017. On being asked, he stated that in the month of April, 2019 Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices, Ahmedabad had contacted them for handling and clearing of imported Walnut In-shell for which they had contacted M/s. Ajay Clearing Enterprise, Mumbai to work as a Customs House Agent and to file Bill of Entry. They had been entrusted with the clearances of their cargo at the Mundra Port. On being asked he stated that they had cleared two consignments of Walnut In-shell for M/s. Kesar Spices, Ahmedabad, one in the month of May, 2019 & the other in the month of July, 2019 imported vide Bill of Entry No. 3385021 dated 25/05/2019 & 3997006 dated 09/07/2019 respectively. On being asked, he stated that they had received necessary documents for import initially via WhatsApp and Email from M/s. Kesar Spices Ahmedabad and subsequently the original documents through courier.

14.3 On specifically asked, he stated that for Bill of Entry No. 3385021 dated 25/05/2019, Bill of Lading & other documents were received on WhatsApp on 21/05/2019. After perusing the documents received from M/s. Kesar Spices, Ahmedabad they had requested them to make necessary changes in Bill of Lading, Invoice, Country of Origin (SAFTA), Transit Certificate by Email on 21/05/2019 as they noticed some mis-match in each document. They had also requested them to provide Packing List, Fumigation, and Phyto Certificate by Email. He further submitted that final documents were received on 23/05/2019 through Email and they forwarded the same to employee of their CHA firm and on their request employee of CHA firm M/s. Ajay Clearing Enterprise prepared the check list for filing Bill of Entry. He submitted Email communication between M/s. Kandla Logistics, Gandhidham and M/s. Kesar Spices, Ahmedabad under their letter dated 20/01/2020.

14.4 On being asked about the documents asked in summons dated 07/01/2020, he submitted 2 files containing page no. 1 to 104 & 1 to 48. On being asked he stated that File no. 1 contained Email conversation with Kesar Spices, Ahmedabad and documents submitted for filing Bill of Entry No. 3385021 dated 25/05/2019 and File no. 2 contained KYC of M/s. Kesar Spices, Ahmedabad, Ledger & Bank Statement, Email Correspondence with M/s. Kesar Spices, Ahmedabad and documents submitted for filing Bill of Entry No. 3997006 dated 09/07/2019.

14.5 He was shown email communication on Page no. 83 to 86 of file no. 1 submitted by him, on being asked he stated that the email was forwarded from kesarspice@gmail.com to him at email ID tyc@kandlalogistics.com and Shri Ravi on 23/05/2019, 19:15 HR. On specifically asked, he stated that the Email was a forwarded email from asmatandbrothers@gmail.com and had a pdf file attached. The said pdf file was of phytosanitary certificates no. 160031 dated 12/05/2019, 202493 dated 07/05/2019 & 202494 dated 07/05/2019 issued by the Islamic Republic of Afghanistan, Ministry of Agriculture, Irrigation and Livestock, Plant Protection and Quarantine Department. On perusal & in token of having seen the email communication and above Phyto sanitary certificates, he put his dated signature on the page no. 83 to 86.

14.6 He was shown email communication dated 23/05/2019, 21:46 and on perusal and having seen the same, he put his dated signature on the page no. 82 of the file no. 1 submitted by him. On being specifically asked, he stated that the email was forwarded from M/s Kesar Spices (kesarspice@gmail.com) to him on email (tyc@kandlalogistics.com) and contained a 'rar' file containing BL for 3 containers, invoices for 3 containers, phyto Certificates for 3 containers, SAFTA certificate for 3 containers, Transit certificate for 3 containers which were enclosed on page no. 69 to 81. On being asked, he stated that these were the final documents on basis of which check list was to be prepared and Bill of Entry was to be filed. He was shown page no. 75 to 77 and on perusal of the same he put his dated signature on page no. 75 to 77. On being asked, he stated that these are Phyto Sanitary Certificates no. 160031 dated 12/05/2019, 202493 dated 09/05/2019 & 202494 dated 09/05/2019 as mentioned in above para and as received by email dated 23/05/2019, 19:15 HR from M/s. Kesar Spices, Ahmedabad.

14.7 He was then shown page no. 5 to 7 of file no. 1 submitted by him, and on perusal and in token of having seen the same, he put his dated signature on the said pages. On being specifically asked, he stated that these were the Phyto Sanitary Certificates No. 202981 dated 13/05/2019, 202494 dated 09/05/2019 & 202493 dated 09/05/2019 issued by the Islamic Republic of Afghanistan, Ministry of Agriculture, Irrigation and Livestock, Plant Protection and Quarantine Department used for filing Bill of Entry No. 3385021 dated 25.05.2019. On being specifically asked how Phyto Sanitary Certificate No. 160031 dated 12/05/2019 received by email on 23/05/2019, 19:15 HR & 23/05/2019, 21:46 had been replaced with Phyto Sanitary Certificates No. 202981 dated 13/05/2019 at the time of filing Bill of Entry No. 3385021 dated 25/05/2019, in this regard he stated that he was unable to recall how the Phyto Sanitary Certificate had been changed; however he stated that these were the documents finally forwarded by the importer M/s. Kesar Spices, Ahmedabad through courier for filing Bill of Entry for import of

Walnut In-Shell from Afghanistan. On being asked he stated that they had not cross checked the earlier forwarded documents with the original documents received through courier. He further stated that they had submitted the original documents before the Customs Authority at the time of assessment and before the Phyto department, Mundra for clearance of goods through CHA M/s. Ajay Clearing.

ENQUIRY WITH BUYERS OF WALNUT INSHELL FROM M/S. KESAR SPICES:

15. A statement of Shri Ravi Patel, Proprietorship of M/s. Uma Trading Co., 6, Ground Floor, Madhupura Commercial Centre, Near Fountain Circle, Madhupur Chowk, Ahmedabad-380004 was recorded on 04/09/2019 under Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that:-

15.1 He was proprietor of M/s. Uma Trading Co., 6, Ground Floor, Madhupura Commercial Centre, Near Fountain Circle, Madhupur Chowk, Ahmedabad-380004 and he was looking after overall work of his firm viz. purchase, sale, taxation and all compliance to different Govt. departments. His firm M/s. Uma Trading Co., Ahmedabad did not import/export goods hence did not have IEC Code. On being asked about the business activity of his firm M/s. Uma Trading Co., Ahmedabad, he stated that M/s. Uma Trading Co., Ahmedabad was a proprietorship firm and registered with GST department having Registration No. 24DDNPP8877F1ZT for trading of goods like Cashew Nuts, Cumin Seeds (Jeera), Black Pepper & Walnuts In-Shell etc. falling under different HSN Codes. On being asked he stated that M/s. Uma Trading Co., Ahmedabad, was having its registered premise at 6, Ground Floor, Madhupura Commercial Centre, Near Fountain Circle, Madhupur Chowk, Ahmedabad-380004. On being asked he stated that they procured their goods from domestic market and sold the same to the retail suppliers situated in Ahmedabad. On being asked, he stated that some of the retailers to whom they had sold their goods were M/s. Hyper Tail, Ahmedabad, M/s. Shrinath Ji Traders, Ahmedabad, M/s. Shri rang Traders, Ahmedabad, M/s. Hare Krishna Grain Center, Ahmedabad, etc. On being asked, he stated that they stored most of their procured goods at their office premise at 6, Ground Floor, Madhupura Commercial Centre, Near Fountain Circle, Madhupur Chowk, Ahmedabad-380004 and sometimes they delivered the goods directly to their buyers after purchase from their seller's end. Further he stated that sometimes they put their perishable goods in cold storage facility whenever needed.

15.2 On being specifically asked about the different grades and their rates of Walnuts In-shell available in Ahmedabad and their trading activity in Inshell Walnuts, he stated that Inshell Walnuts were graded on the basis of their origin and as per his knowledge the said Inshell Walnuts were graded as on their Origin and

same were graded as Kashmiri Inshell Walnut, Afghanistan Inshell Walnuts, California Inshell Walnuts and Chile Inshell Walnuts. On being asked about the rates of the four types of Inshell Walnuts, he stated that the rates of Inshell Walnuts depended on the hardness of Shell, Taste of Walnuts, remaining Shelf Life, quantum of sale/purchase and on seasons. They dealt in all grades of Inshell Walnuts as per market's requirement.

15.3 On being asked about the documents asked in the Summons dated 29.08.2019, he submitted the copies of invoices issued by M/s. Kesar Spices, Ahmedabad having Bill No. KSC12 dated 19-06-2019, KSC13 dated 19-06-2019, KSC14 dated 24-06-2019 & KSC15 dated 26-06-2019 and Bank statement of Account No. 434002501002224 maintained at the Kukarwada Nagrik Sahakari Bank Limited, Shahibaug, Ahmedabad for the period from 01/04/2019 to 30/08/2019 vide letter dated 04/09/2021.

15.4 On being asked about the business relation with M/s. Kesar Spices, Ahmedabad he stated that **in the month of June, 2019 they came in contact with Shri Sureshkumar Bhatt of M/s. Kesar Spices, Ahmedabad through common traders in the market and after initial discussion about the business he informed that Shri Sureshkumar Bhatt had some quantity of old 'California Inshell Walnuts' and offered to sell the goods at lower rate. Shri Sureshbhai Bhatt also provided the samples of said 'California Inshell Walnuts' as sample to verify the quality.** After verifying the taste of Walnuts and hardness of the shell of the said samples of 'California Inshell Walnuts', they approved the goods to purchase. On being asked that why did they agree to purchase the old lot of 'California Inshell Walnuts' as same may be rotten/foul in short time, in this regard he accepted that the said 'California Inshell Walnuts' was old but taste of the walnuts had not changed much and Shri Sureshkumar offered the goods to sale at reasonable rates i.e. @ Rs. 170/- per Kg, therefore they agreed to purchase the same. He further stated that they had purchased around 10000 kg of Walnuts from Shri Sureshkumar Bhatt on the Invoices issued by M/s. Kesar Spices, Ahmedabad in the month of June, 2019 and they had made payments through RTGS through their bank.

15.5 Further, he stated that after purchase of the said old lot of 'California Inshell Walnuts' from Shri Sureshkumar Bhatt, he (Shri Sureshkumar Bhatt) further enquired with them about any further requirement of Inshell Walnuts and informed that one of his (Shri Sureshkumar Bhatt's) known traders had some quantity of same old lot of 'California Inshell Walnuts' for sale. Shri Sureshkumar Bhatt informed that the said trader will sell the said 'California Inshell Walnuts' at some higher rate @ Rs. 175/- Per Kg or above and applicable GST. Since they (Shri

Ravi Patel) had potential purchaser for the said goods in market with reasonable profit, therefore they agreed to purchase the same. **Shri Sureshkumar Bhatt further informed that about 5 MT of 'California Inshell Walnuts' (old lot) had been available with M/s. V H Traders, Deesa, Gujarat and provided the contact number of Shri Vishalbhai and informed them that Shri Vishalbhai was the owner of M/s. V H Traders, Deesa, Gujarat.** M/s. Uma Trading Co., Ahmedabad interacted with Shri Vishalbhai to finalize the deal and purchased about 5MT of 'California Inshell Walnuts' (old lot) in the month of June, 2019 and July, 2019 at some higher rate than the earlier rate of Rs. 170/- per Kg. On being asked about the purchase invoices of M/s. V H Traders, Deesa, Gujarat he stated that at the time he didn't have the said invoices with him, but he would produce the same within two days; that they had made the payments through RTGS to M/s. V H Traders, Deesa, Gujarat against the said purchases.

15.6 On being asked he again confirmed that Shri Sureshkumar Bhatt sold him (Shri Ravi Patel) old lot of 'California Inshell Walnuts' in the month of June, 2019 on the invoices of M/s. Kesar Spices, Ahmedabad. Further, he stated that they also purchased certain quantity of 'California Inshell Walnuts' from the same old lot of 'California Inshell Walnuts' from M/s. V H Traders, Deesa, Gujarat on the reference of Shri Sureshkumar Bhatt. On being asked he stated that they knew that the walnuts produced in California, USA were known as 'California Inshell Walnuts'.

16. A statement of Shri Vishal Harishbhai Joshi, Proprietor of M/s. V H Traders, 10, Pavan Complex, B/H UCO Bank, Pavan Corner, Deesa, Banaskantha, Gujarat - 385535 was recorded on 06/01/2020 under Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that: -

16.1 He was proprietor of M/s. V H Traders, Deesa and he was looking after overall work of his firm viz. purchase, sale, taxation and all compliance to different Govt. departments. His firm M/s. V H Traders, Deesa did not import/export goods hence did not have IEC Code. On being asked about the business activity of his firm M/s. V H Traders, Deesa, he stated that M/s. V H Traders, Deesa was a proprietorship firm and registered with GST department having Registration No. 24BLFPJ6538P1ZL for trading of goods like Watermelon Seeds, Cumin Seeds (Jeera), Pomegranates, Psyllium husk (Isabgol) & Walnuts In-shell etc. falling under different HSN Codes. On being asked he stated that M/s. V H Traders, Deesa, was having its registered premise at 10, Pavan Complex, B/H UCO Bank, Pavan Corner, Deesa, Banaskantha, Gujarat-385535. On being asked he stated that, as per retail/wholesale customer's requirements, they procured their goods from domestic market and sold the same to the retail/wholesale customer mostly situated in Gujarat i.e. Deesa, Ahmedabad, Surat Vadodara etc. On being asked, he stated that before opening his firm M/s. V H Traders, Deesa in January, 2019 he used to work

as a middleman on commission/brokerage basis for the above said trading goods i.e. Watermelon Seeds, Cumin Seeds (*Jeera*), Pomegranates (*Dadam*), Psyllium husk (*Isabgol*) & Walnuts shelled/In-shell. On being asked, he stated that some of the wholesalers/retailers to whom they had sold their goods were M/s. Uma Trading Co., Ahmedabad, M/s. Jeerawala Traders, Surat, M/s. Rajesh Traders, Vadodara, M/s. Golden Valley Overseas, New Delhi, M/s. Hare Krishna Traders, Ahmedabad & M/s. Kailash Kirana Store, Ahmedabad etc. On being asked, he stated that they stored most of their procured goods at their office premise at 10, Pavan Complex, B/H UCO Bank, Pavan Corner, Deesa, Banaskantha, Gujarat - 385535 and sometime they delivered the goods directly to their buyers after purchase from their seller's end. Further he stated that sometime they put their perishable goods in cold storage facility whenever needed. On being asked he stated that he had the facilities of Cold storage namely M/s. P M Fruit Storage, Vill-Aakhola, Tal.- Deesa, Dist.- Banaskantha (concerned person Shri Dashrath Mali). On being asked he stated that they made payments against their purchase to their suppliers through Cheques/NEFT/RTGS only. Further, he stated that they sell the goods through Cheques/ NEFT/RTGS as well as on Cash basis also. He further stated that they dealt in retail sale also therefore they sold their goods on cash basis on requirement of their buyers.

16.2 On being asked about the business relation with M/s. Kesar Spices, Ahmedabad he stated that Shri Suresh Bhatt was his Brother-in-Law and he was proprietor of M/s. Kesar Spices, Ahmedabad. He further stated that Shri Suresh Bhatt was also operating one other firm/company namely M/s. Earthmix Agro Pvt. Ltd., Unjha for trading and manufacturing/processing of Watermelon Seeds. He regularly traded with M/s. Kesar Spices, Ahmedabad and M/s. Earthmix Agro Pvt. Ltd., Unjha since inception of his firm. He purchased/sold the goods mainly watermelon Seeds, Watermelon kernel (*Magaj*), Inshell Walnuts, Cummins Seeds, Psyllium husk (*Isabgol*) etc. from these two firms.

16.3 On being specifically asked about the different grades and their rates of Walnuts In-shell available in Gujarat and their trading activity in Inshell Walnuts, he stated that as per the prevailing market practice Inshell Walnuts were graded on the basis of their origin and as per his knowledge the said Inshell Walnuts were graded as Kashmiri Inshell Walnut (Kashmiri Origin), Afghanistan Inshell Walnuts (Afghani Origin), California Inshell Walnuts (USA origin) and Chile Inshell Walnuts (USA/Chile Origin). On being asked about the rates of the four type of Inshell Walnuts and what were the criteria to distinguish the four type of Walnuts Inshell i.e. Kashmiri Inshell Walnut, Afghanistan Inshell Walnuts, California Inshell Walnuts and Chile Inshell Walnuts, he stated that he was unable to explain the fact as they had mostly dealt in Indian (Kashmiri) Inshell Walnuts as per market's

requirement. Further, he stated that he had purchased the Walnut Inshell from M/s. Kesar Spices and M/s. Mahalaxmi Agro Industries, Unjha on the suggestion of Shri Suresh Kumar Bhatt. Shri Suresh Kumar Bhatt had informed him that he (Shri Suresh Bhatt) had imported the Walnut Inshell from Afghanistan in the name of his firm M/s. Kesar Spices, Ahmedabad. Further, Shri Suresh Bhatt had offered him to purchase the Afghani Walnut Inshell at reasonable rates therefore he purchased the said Walnuts Inshell. Further, Shri Suresh Bhatt also informed him that he (Shri Suresh Bhatt) had sold the Afghani Walnuts Inshell to M/s. Mahalaxmi Agro Industries, Unjha and M/s. Mahalaxmi Agro Industries, Unjha was unable to sell the same in market, therefore on his suggestion he had purchased the said Walnuts Inshell from M/s. Mahalaxmi Agro Industries, Unjha.

16.4 On being specifically asked, he stated that they had made payment to M/s. Mahalaxmi Agro Industries, Unjha through RTGS against their purchase of Walnuts Inshell, however they hadn't made payment to M/s. Kesar Spices, Ahmedabad for the Inshell Walnuts purchased from them. On being further asked, he stated that they had purchased Inshell Walnuts from M/s. Mahalaxmi Agro Industries, Unjha on suggestion of Shri Suresh Bhatt, Proprietor M/s. Kesar Spices, Ahmedabad. He once again stated that Shri Suresh Bhatt informed him that the Inshell Walnut in possession of M/s. Mahalaxmi Agro Industries was the same Inshell Walnuts which was earlier sold to their firm by M/s. Kesar Spices, Ahmedabad.

16.5 On being asked specifically he stated that they had sold Inshell Walnuts purchased from M/s. Kesar Spices, Ahmedabad & M/s. Mahalaxmi Agro Industries, Unjha, to M/s. Uma Trading Co., Ahmedabad, M/s. Kailash Kirana Store, Ahmedabad, M/s. Hare Krishna Traders, Ahmedabad etc. Further he stated that as of now he did not remember all the buyers to whom they had sold Inshell Walnuts purchased from M/s. Kesar Spices, Ahmedabad & M/s. Mahalaxmi Agro Industries, Unjha hence he requested to give two days' time and he would submit all the sales invoices to whom they had sold Inshell Walnuts. On being asked about GST returns, he stated that his firm had filed all GST returns i.e. GSTR 1 & GSTR 3B till date and the copies of same would also be provided within two days' time.

16.6 On being asked about the documents asked in the Summons dated 27.12.2019, he submitted the copies of invoices issued by M/s. Kesar Spices, Ahmedabad having Bill No. KSC11 dated 16-06-2019 and Bank statement of Account No. 049705500161 maintained at the ICICI Bank, Deesa for the period from 15/06/2019 to 31/12/2019 bearing page no. 01 to 04.

16.7 Further, he stated that they had purchased almost 16,425 Kg of Walnuts from Shri Sureshkumar under Invoice No. KSC11 dated 16/06/2019 issued by M/s.

Kesar Spices, Ahmedabad and they had not made any payments to them. Further, he stated that he had purchased Inshell Walnuts from M/s. Mahalaxmi Agro Industries, Unjha on suggestion of Shri Suresh Bhatt; that he had sold the said Walnut Inshell to M/s. Uma Trading Co., Ahmedabad, M/s. Kailash Kirana Store, Ahmedabad and M/s. Hare Krishna Traders, Ahmedabad.

VOLUNTARY STATEMENT OF SHRI SURESH BHATT, PROPRIETOR OF M/S. KESAR SPICES, AHMEDABAD

17. A statement of Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices, 116, First Floor, Madhukant Complex-2, Near Hindi School, Bardolpura, Madhupura, Ahmedabad-380004 was recorded on 02/08/2023 under Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that: -

17.1 Before recording his statement, he had been given to understand that his statement was being recorded in connection with inquiry being conducted in the import of Walnut in-shell vide Bill of Entry No. 3997006 dated 09/07/2019 by M/s. Kesar Spices, Ahmedabad; that his educational qualification was Metric Pass. He can read and write Hindi and Gujarati languages and also can slightly understand English; that he was the sole Proprietor of M/s. Kesar Spices, Ahmedabad and being the Proprietor of M/s. Kesar Spices, Ahmedabad he was looking after all the work related to purchases, imports, sales, accounting, taxation and documentation with all the departments including Customs, GST and other Central and state authorities. He was also Director in one other company namely M/s. Earthmix Agro Private Limited, Tundav Kani Road, Opposite Hanuman Temple, Unjha- 384170 and other two directors in the company were his father Shri Dharma Shankar Bhatt and brother Shri Ravi Bhatt. He further stated that M/s. Kesar Spices, Ahmedabad was having valid Import-Export Code number 0813008875. M/s. Earthmix Agro Private Limited, Unjha was engaged in trading of watermelon Seeds, Season Seeds and processing thereof on domestic level only. As an identity proof he had produced the photocopy of his Aadhar Card bearing No. 203012497824 issued by UIDAI. He was having PAN number APWPB9509E and he was paying income-tax as Individual capacity and filing return to Income Tax Department for last 8 years. On being asked about his bank account details he stated that he was having Saving bank account in Axis Bank, Shahibaug Branch, Ahmedabad (A/c No. 915010030958980).

17.2 On being asked about the business activity of his firm M/s. Kesar Spices, Ahmedabad, he stated that M/s. Kesar Spices, Ahmedabad was a proprietorship firm and registered with GST department having Registration No. 24APWPB9509E1ZR for the trading of 'Dry fruits and Food Spices' falling under different HSN Codes. On being asked he stated that M/s. Kesar Spices, Ahmedabad,

was having its registered premise at 116, First Floor, Madhukant Complex – 2, Near Hindi School, Bardolpura, Madhupura, Ahmedabad-380004; that his firm was engaged in the business of dry fruits and spices i.e. specifically Chilies, they were procuring their trading goods domestically as well as importing from overseas suppliers.

17.3 On being asked he stated that he had obtained IEC code in the year 2013 for M/s. Kesar Spices, Ahmedabad and he had started their first import in the month of July, 2017 from Pakistan at Mundra Port and the imported goods were 'Water Melon Seeds'. On being asked he stated that in FY 2017-18 they had imported 06 consignments of 'Water Melon Seeds' and one consignment of 'Red Chilies' from Pakistan. In FY 2018-19 they had not imported any consignment. Thereafter, in May, 2019 they had imported one consignment of 'Walnuts in -Shell' vide Bill of Entry No. 3385021 dated 25/05/2019 and second consignment of 'Walnuts in -Shell' vide Bill of Entry No. 3997006 dated 09/07/2019. Both the consignments were declared as goods imported from Afghanistan based supplier namely M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan No: 2629-27, Afghanistan.

17.4 On being asked he stated that M/s. Ajay Clearing Enterprise was his Customs House Clearing Agent since 2017. They handle the Customs House clearance of all their imports (M/s. Kesar) at Mundra port. Further, on being asked he stated that he forwarded the import documents to the CHA firm through courier for the goods to be cleared at Mundra port. He got the Check-list through e-mail from CHA's e-mail ID on their (M/s. Kesar) email Id: kesarspice@gmail.com and he intimated confirmation of the same through e-mail or through telephone. They paid the Customs duty through their CHA. The CHA pays the duty as per his direction and in turn he (Shri Suresh Bhatt) transferred the amount to the CHA through RTGS.

17.5 Further, on being asked he (Shri Suresh Bhatt) stated that he (Shri Suresh Bhatt) came in contact with Afghanistan based supplier of Walnuts In -Shell in Dubai during Gulf food fair. On being asked he stated that he went Dubai to visit the Gulf food fair for his business prospectus, where he came in contact with the person namely Mr. Ashmat of firm M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan. Mr. Ashmat offered him one business proposal that he (Mr. Ashmat) will export 'walnut in -Shell' to him with reasonable prices and credit facility, he accepted the offer. He further stated that during final discussion about the business Mr. Ashmat will supply the walnut of Afghanistan Origin. He further stated that Mr. Ashmat told him (Shri Suresh Bhatt) that he (Mr. Ashmat) was supplying dry fruits to other Indian Importers.

17.6 On being asked he (Shri Suresh Bhatt) stated that Mr. Ashmat, was the Owner of M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan.

17.7 He was shown the Panchnama dated 10/07/2019 drawn at his office premise situated at 116, First Floor, Madhukant Complex – 2, Near Hindi School, Bardolpura, Madhupura, Ahmedabad-380004. Further he was shown the Panchnama dated 10/07/2019 drawn at Mundra Container Freight Station, Adani Port & Special Economic Zone, Mundra. After perusal of panchnames he found that the Panchnama was drawn for examination of Goods i.e. Walnut In shell imported vide Bill of Entry No. 3997006 dated 09/07/2019, in the presence of Shri Bhegani Shahnazaj (representative of CHA), representative of Custodian and 02 independent Panch witnesses.

17.8 He was specifically shown the said Panchnama dated 10/07/2019 drawn at Mundra Container Freight Station, Adani Port & Special Economic Zone, Mundra, wherein the pictures of paper slips found in the PP bags containing the imported goods i.e. Walnuts In-Shell' and slips found stick on the PP Bags and pictures of the contents printed on the said PP bags containing the imported goods. He found the pictures contain certain printed text and the content of the said the text printed on the paper slips found inside the PP Bags, attached (Stick) to the PP Bags and printed on the PP Bags are reproduced as under:

Slip (Found attached to the bags):

T.M.DUCHE NUT CO. INC.

IN SHELL WALNUT CHANDLER

25KG. JUMBO LARGE PRODUCT OF USA

PACKING DATE 1/11/2019

EXPIRATION DATE 1/11/2021

LOT: 901101

LOAD: 27

GROWER: 823

Slip 1: Yellow Background and Black Ink (Found inside in the bags)

INSPECTED AND

CERTIFIED FOR

SHIPMENT

California walnut Board

7S 99329 W12

Slip 2: White Background and Black Ink (Found inside the bags)

COMMODITY

KING

WALNUT IN SHELL

CHANDLER JUMBO

ORIGIN: USA

WEIGHT: 25KG

PRODUCTION DATE: 12/2018

EXPIRY DATE: 12/2020

LOT No.D3148

17.9 On perusal of the aforesaid Panchnama, he stated that some slips were found in the container mentioning 'Walnut In shell' of USA Origin. On being asked about the slips in the container mentioning 'Walnut In shell' of USA Origin he stated that they were not aware of the same how these slips were in the container. Further, on being asked he stated that he had placed order for walnut of Afghanistan origin and as per his knowledge the goods were of Afghan Origin as told by Mr. Ashmat of M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan.

17.10 On being specifically asked about the documents related to Import he stated that Mr. Ashmat of M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan has provided the documents like Commercial Invoice, Packing List, Fumigation Certificate, Phyto Certificate, Country of Origin Certificate and Bill of Lading from Afghanistan and on the based on the said documents they had filed Bill of Entry No. 3385021 dated 25/05/2019 and 3997006 dated 09/07/2019 for the said imports.

FORENSIC ANALYSIS OF WITHDRAWN ELECTRONIC GADGETS:

18. The two (02) Mobile Phones seized under Panchnama dated 12/09/2019 drawn at the office premises of M/s. Kesar Spices situated at 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad – 380004 were examined by the Cyber Forensic Laboratory, Directorate of Revenue Intelligence, Mumbai Zonal Unit, Mumbai under panchnama dated 12/09/2019 drawn in the office of DRI Mumbai for forensic examination and for retrieval of data/details from the said devices and making them available in readable format. The data /details retrieved from the said two mobile phones were exported to one external hard disc for further investigation/scrutiny.

CALL DATA RECORDS FROM SERVICE PROVIDERS:

19. The mobile service providers namely M/s. Reliance Jio Infocomm Ltd., Ahmedabad, Gujarat was requested vide letter F. No. DRI/AZU/CI/ENQ-83 (INT-

26/2019)/2019 dated 01/10/2019 to provide Call details Records (CDR) in respect of mobile number 8128618188, 8328906287, 9925008338 for the period from 01/01/2019 to 30/09/2019 to 01/10/2019 of data provided and M/s. Vodafone West Limited, Ahmedabad was requested vide letter F. No. DRI/AZU/CI/ENQ-83 (INT-26/2019)/2019 dated 01/10/2019 to provide Call details Records (CDR) in respect of mobile number 9966555539, 9909555539, 8128618188, 8980042222, 8328906287, 8980123458 and 9925008338 for the period from 01/01/2019 to 01/10/2019 of data provided and also to provide the information/details viz. address of the subscriber and forward the photocopy of the subscriber's initial application form along with its enclosures viz. residence proof, ID proof, photo, etc. submitted at the time of obtaining new SIM card. In reference to that the Service providers M/s. Reliance Jio Infocom Ltd., Ahmedabad, Gujarat vide their letter No. RJILGUJ/Cert CDR/331/2019 dated 20/01/2020 and M/s. Vodafone West Limited, Ahmedabad, Gujarat forwarded the CDRs and photocopy of the subscriber's initial application form.

20. On scrutiny of the said external hard disc wherein data /details retrieved from the two mobile phones were exported and on scrutiny of call details records, it was noticed that Shri Suresh Bhatt **was not in contact with any mobile number/landline number of Afghanistan** and was in contact with mobile Nos./Landline Nos. - 923032763535, 923214447868, 923205361010, 923007096850, 922132418316, and 923224828448, **which were the mobile number of Pakistan**; whereas the contact no. provided in the Commercial Invoice issued by the so claimed exporter M/s. Kalimullah Hidayat Afghan Ltd., Kandhar, Afghanistan was +93-707721005. On scrutiny of call details, it was observed that various calls either received or made by Shri Suresh Kumar Bhatt to International numbers were on mobile 923032763535, 923214447868, 923205361010, 923007096850, 922132418316, and 923224828448 with international calling prefix of **Pakistan (+92) only** and not to Afghanistan (+93). It categorically appears that Shri Suresh Bhatt was in contact with Pakistan based person and not with any person belong to Islamic Republic of Afghanistan.

ENQUIRY WITH PLANT QUARANTINE STATION, KUTCH & THE HEAD OF QUARANTINE AND PLANT PROTECTION DEPARTMENT, IPPC OFFICIAL CONTACT POINT OF AFGHANISTAN, ISLAMIC REPUBLIC OF AFGHANISTAN:

21. The Directorate of Revenue Intelligence requested the Assistant Director (E), Plant Quarantine Station, Mundra - Kutch, Gujarat, Department of Agriculture & Cooperation Farmers Welfare, Ministry of Agriculture and Farmer's Welfare, Government of India to cause necessary verification of the Phyto Sanitary certificates issued by the designated Afghanistan authority. The Assistant Director (E), Plant

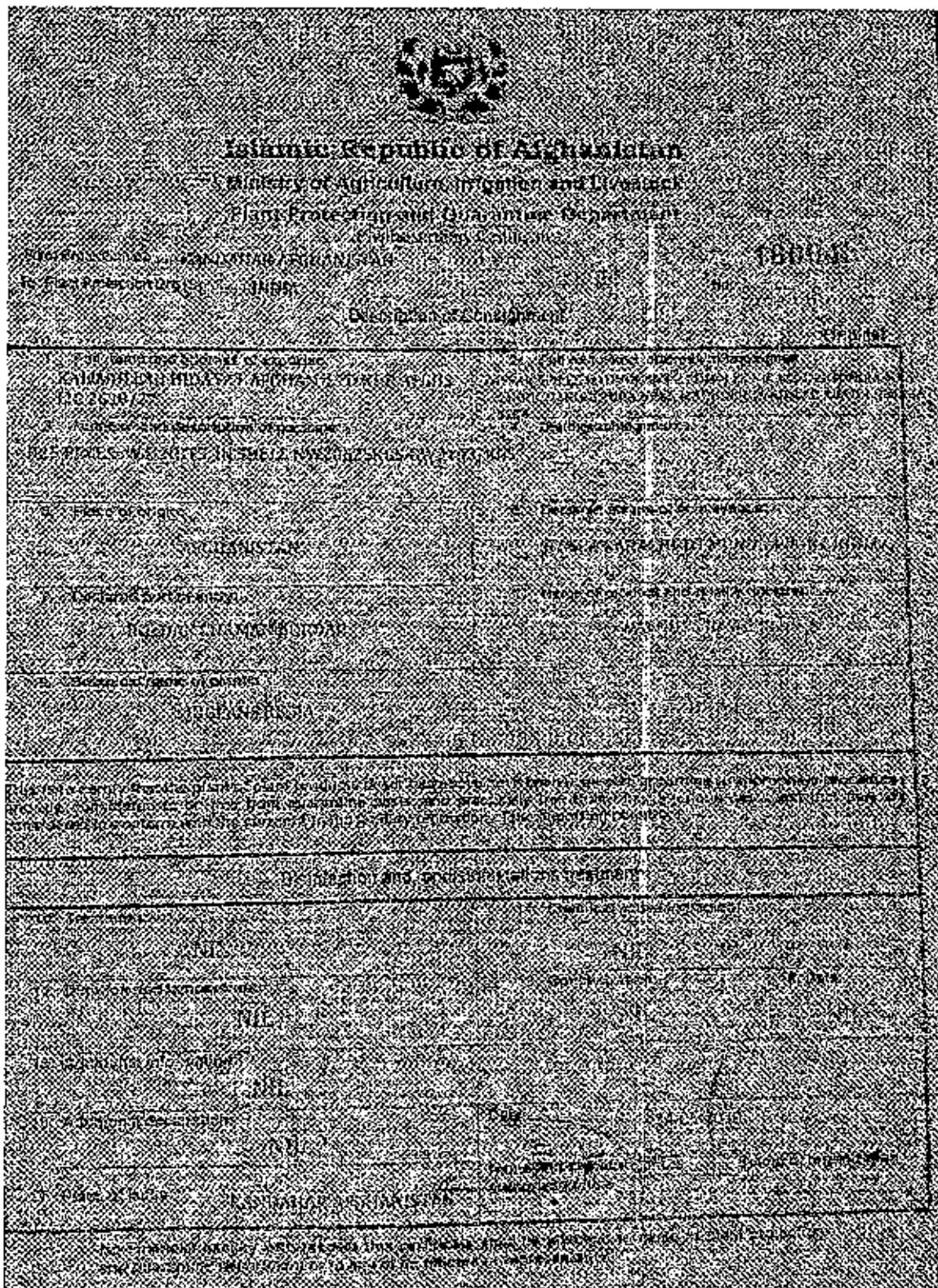
Quarantine Station, Mundra - Kutch, Gujarat, Department of Agriculture & Cooperation Farmers Welfare, Ministry of Agriculture and Farmer's Welfare, Government of India vide email dated 24/12/2019 caused an enquiry with the Head of Quarantine and Plant Protection Department, IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate **regarding genuineness of the Phyto Sanitary Certificates (PSC)** issued by the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, in response to that the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate vide email dated 25/12/2019 had informed that the treatment with 'Methyl Bromide' (MB) shown in the Certificates submitted by **M/s. Kesar Spices at the time of import are completely fake.** Further, IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan had forwarded the scanned copies of the original certificates issued to the exporter of Afghanistan to the Assistant Director (E), Plant Quarantine Station, Mundra - Kutch, Gujarat. The Assistant Director (E), Plant Quarantine Station, Mundra - Kutch, Gujarat had forwarded the said email and documents to Directorate of Revenue Intelligence Ahmedabad on 26/12/2019.

21.1 Based on the above, the Directorate of Revenue Intelligence, Ahmedabad vide email dated 01/01/2020 directly requested the Head of Quarantine and Plant Protection Department, IPPC Official Contact Point of Afghanistan, the Ministry of Agriculture, Irrigation and Livestock, Plant Protection and Quarantine Department, Islamic Republic of Afghanistan to cause necessary verification of the 03 Phyto Sanitary certificates issued by the designated Afghanistan authority enquiry regarding one earlier import of Walnuts (IN Shell) in May, 2019 by **M/s. Kesar Spices, Ahmedabad, Gujarat.** In response to that the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate vide email dated 01/01/2020 had informed that they received the said three certificates from Kandahar Quarantine Station and further informed that the treatment with 'Methyl Bromide' (MB) shown in the Certificates submitted by **M/s. Kesar Spices at the time of import were completely fake.** Further, IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan forwarded the scanned copies of the original certificates issued to overseas suppliers to DRI, Zonal Unit, Ahmedabad. For the sake of clarity, the 05 Phyto Sanitary Certificates (PSC) forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan through emails vis-à-vis 05 Phyto Sanitary Certificates (PSC) submitted by the importer at the time of filing of Bills of Entry are reproduced below: -

Phyto Sanitary Certificates in respect of BE No. 3997006 dated 09/07/2019

Phyto Sanitary Certificates forwarded by Islamic Republic of Afghanistan

(1)



Phyto Sanitary Certificates (PSC) No. 160043 dated 14/05/2019 forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan through email ~~shook disinfection and/or disinfection treatment as NIL in every column from 10-16 of the Certificate~~

(1A) Phyto Sanitary Certificates submitted by the importer at the time of Import



Islamic Republic of Afghanistan
Ministry of Agriculture, Irrigation and Livestock
Plant Protection and Quarantine Department
Phytosanitary Certificate
Plant Protection of: KANDAHAR AFGHANISTAN
To: Plant Protection Org (S): INDIA
No. A-160043

Description of Consignment

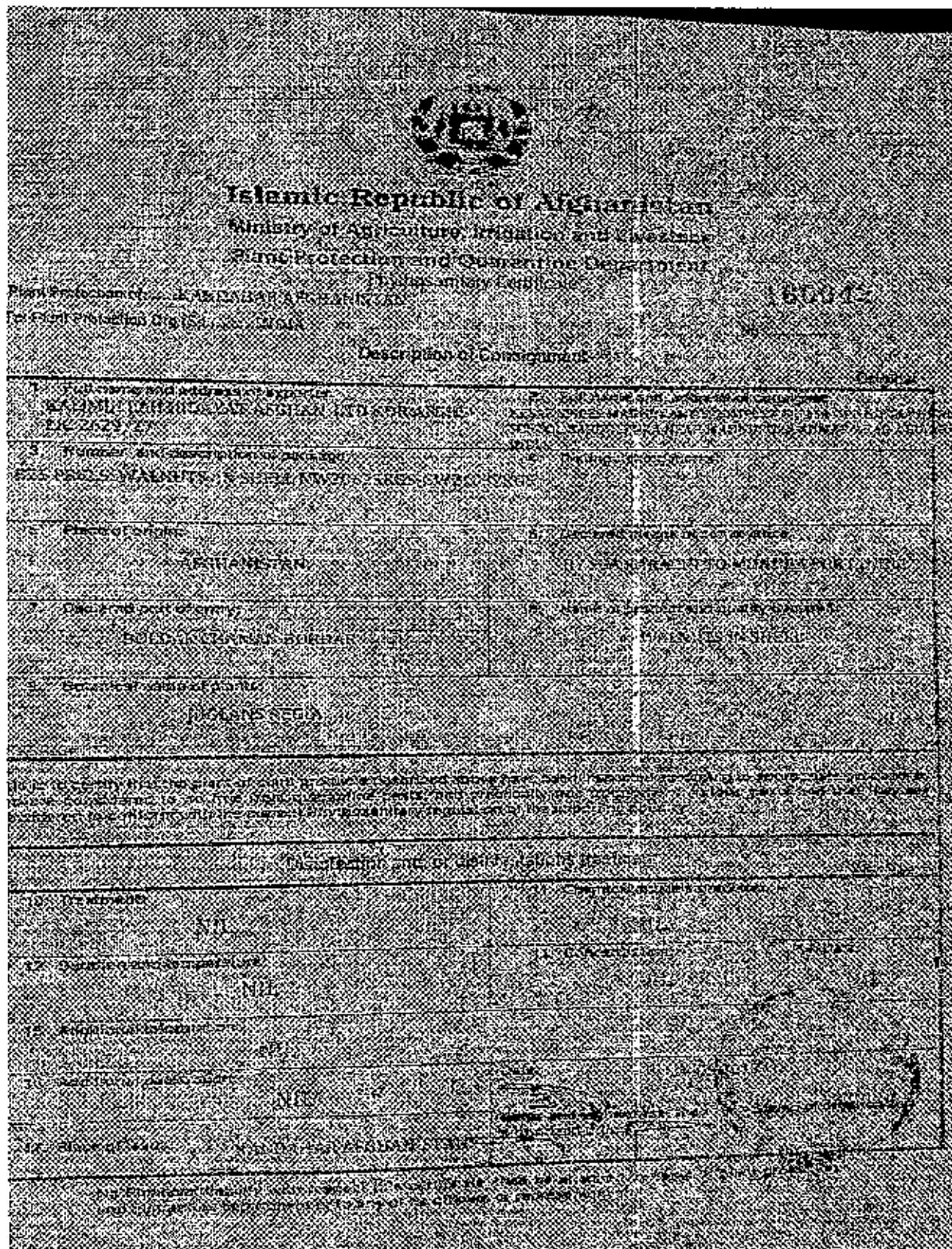
Origin

1. Full name and address of exporter: KALIMULLAH HDAYAT AFGHA LTD KDR AFGHS LIC NO : 2639-27	2. Full name and address of consignee: KESAR SPICES MADHUPURA 2 COMPLEX F-1-116 OPP HINDI HIGH SCHOOL BARDOLPURA NEAR MADHUPURA ARMAQ ARAD 4 CHHIBAT INDIA	
3. Number and description of Package: 925 PCS/WALNUTS IN SHELL NW 20625 KGS GW21037 KGS	4. Distinguishing marks:	
5. Place of origin: AFGHANISTAN	6. Declared means of conveyance: BY SEA KARACHI TO MUNDRA PORT INDIA	
7. Declared port of entry: BOUDAK CHAMAN BORDAR	8. Name of product and quality declared: WALNUTS IN SHELL	
9. Botanical name of plants: JUGLANS SPP		
<p>This is to certify that the plant or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests and that they are considered to conform with the current Phytosanitary regulation of the importing country.</p>		
Disinfection and, or disinfestation treatment		
10. Treatment: FUMIGATION	11. Chemical active ingredient: METHYL BROMIDE	
12. Duration and temperature: 24 HRS 21°C	13. Concentration: 16 G/M	14. Date: 12-05-2019
15. Additional information:		Date: 14-05-2019
16. Additional declaration: FREE FROM ERSCHOVIELLA MUSCULANA (ASIAN WALNUT MOTH)	Name and signature of the authorized official	
17. Place of issue: KANDAHAR AFGHANISTAN	Stamp of organization	

No Financial liability with respect this certificate shall be attached to name of plant protection and quarantine department or to any of its officers or representatives.

Phyto Sanitary Certificates (PSC) No. 160043 dated 14/05/2019 submitted by the importer at the time of import show disinfection and, or disinfestation treatment as (10) Treatment: Fumigation, (11) Chemical active ingredient: Methyl Bromide, (12) Duration and Temperature: 24 Hrs 21°C, (13) Concentration: 16 G/M, (14) Date: 12/05/2019 and (16) Additional information: Free from Erschoviella Musculana (Asian Walnut Moth).

(2) Phyto Sanitary Certificates forwarded by Islamic Republic of Afghanistan



Phyto Sanitary Certificates (PSC) No. 160042 dated 14/05/2019 forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan through email show disinfection and/or disinfestation treatment as NIL in every column from 10-15 of the Certificate

(2A) Phyto Sanitary Certificates submitted by the importer at the time of Import


Islamic Republic of Afghanistan
Ministry of Agriculture, Irrigation and Livestock
Plant Protection and Quarantine Department
Phytosanitary Certificate
Plant Protection of: KANDAHAR AFGHANISTAN
To: Plant Protection Org (S): INDIA
No: 160042
Description of Consignment
Original

1. Full name and address of exporter: KALIMULLAH HIDAYAT AFGHA LTD KDR AFGHS LIC NO: 2629-27	2. Full name and address of consignee: KESAR SPICES MADHUKANT-2 COMPLEX F-F-116 OPP HINDU HIGH SCHOOL BARDOLPURA NEAR MADHUPRA AHMEDABAD GUJARAT INDIA
3. Number and description of Package: 825 PCKLS-WALNUTS IN SHELL NW 20625 KGS GW 21037 KGS	4. Distinguishing marks:
5. Place of origin: AFGHANISTAN	6. Declared means of conveyance: BY SEA KARACHI TO MUNDRA PORT INDIA
7. Declared port of entry: BOLDAK CHAMAN BORDAR	8. Name of product and quality declared: WALNUTS IN SHELL
9. Botanical name of plants: JUGLANS SPP	

This is to certify that the plant or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests and that they are considered to conform with the current Phytosanitary regulation of the importing country.

Disinfection and, or disinfestation treatment		
10. Treatment: FUMIGATION	11. Chemical active ingredient: METHYL BROMIDE	
12. Duration and temperature: 24 HRS 21°C	13. Concentration: 16 G/M	14. Date: 12-05-2019
15. Additional information:	Date: 14-05-2019	
16. Additional declaration: FREE FROM ERSCHOVIELLA MUSCULANA (ASIAN WALNUT MOTH)	Name and signature of the authorized officer	
17. Place of issue: KANDAHAR AFGHANISTAN	Stamp of organization	

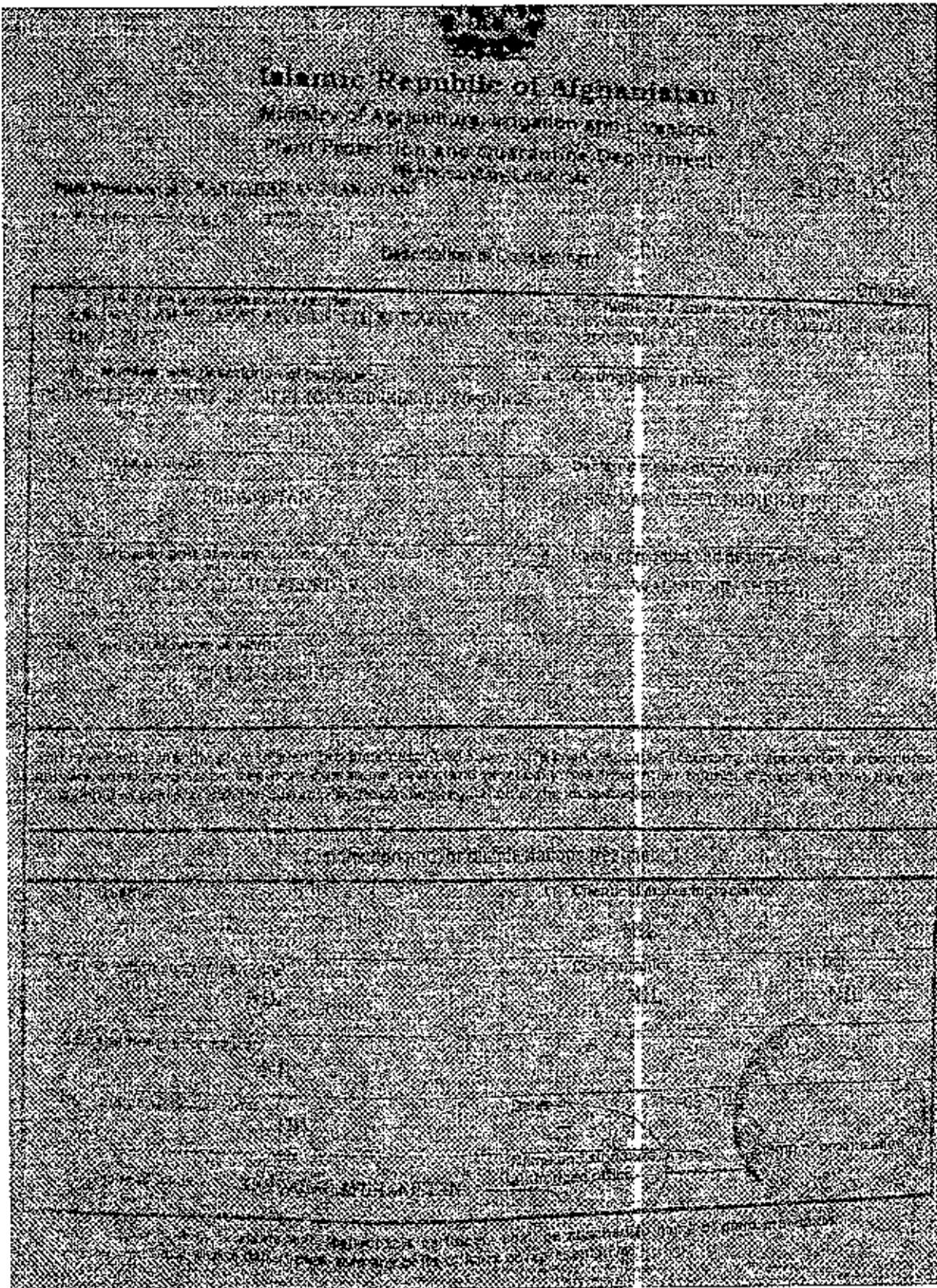
No financial liability with respect this certificate shall be attached to name of plant protection and quarantine department or to any of its officers or representatives.

Phyto Sanitary Certificates (PSC) No. 160042 dated 14/05/2019 submitted by the importer at the time of import show disinfection and, or disinfestation treatment as [10] Treatment: Fumigation, [11] Chemical active ingredient: Methyl Bromide, [12] Duration and Temperature: 24 Hrs 21°C, [13] Concentration: 16 G/M, [14] Date: 12/05/2019 and [16] Additional information: Free from Erschoviella Musculana (Asian Walnut Moth).

Phyto Sanitary Certificates in respect of BE No. 3385021 dated 25/05/2019

Phyto Sanitary Certificates forwarded by Islamic Republic of Afghanistan

(1)



Phyto Sanitary Certificates (PSC) No. 202493 dated 09/05/2019 forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan through email [show-disinfection](#)

and, or disinfestation treatment as NIL in every column from 10-16 of the Certificate.

(1A) Phyto Sanitary Certificates submitted by the importer at the time of Import

 Islamic Republic of Afghanistan Ministry of Agriculture, Irrigation and Livestock Plant Protection and Quarantine Department KANDAHAR AFGHANISTAN Plant Protection of INDIA To Plant Protection Org (S): 202493	
Description of Consignment	
Original	
1. Full name and address of exporter: KALIMULLAH KHADAFI AFGHANISTAN AFGHANISTAN TIN NO: 2629-07	2. Full name and address of consignee: CEESAR SPICES MADHUKAR 12 COMPLEX RT-16 GPO 11000 HINDU HIGH SCHOOL BANVOLPURA NEAR MATHURA AHMADABAD GUJARAT INDIA
3. Number and description of Package: 800 PCLES - WALNUTS IN SHELL NW 20000 KGS C.I.F. INDIA	4. Distinguishing marker:
5. Place of origin: AFGHANISTAN	6. Declared means of conveyance: BY SEA FREIGHT TO MINDRA PORT INDIA
7. Declared port of entry: BOUDAK CHINIAN BORDER	8. Name of product and quantity declared: WALNUTS IN SHELL
9. Botanical name of plants: JUGLANS	
<p>This is to certify that the plant of plant products described above have been inspected according to the appropriate procedures and are considered to be free from quarantine pests and practically free from other injurious pests and that they are considered to comply with the current Phyto sanitary regulation of the importing country.</p>	
Disinfection and/or disinfestation treatment	
10. Treatment: DISINFECTION	11. Chemical active ingredient: METHYL BROMIDE
12. Duration and temperature: 24 HRS 21°C	13. Concentration: 1% 0.1
14. Dates:	09-05-2019
15. Additional information:	
16. Additional declaration: FREE FROM ERICHOIELLA MUSCULANA ASIAN WALNUT WEEVIL	17. Name and stamp of Sanitary Inspector: Stamp of Sanitary Inspector
18. Place of issue: KANDAHAR AFGHANISTAN	19. Name and stamp of Sanitary Inspector: Stamp of Sanitary Inspector

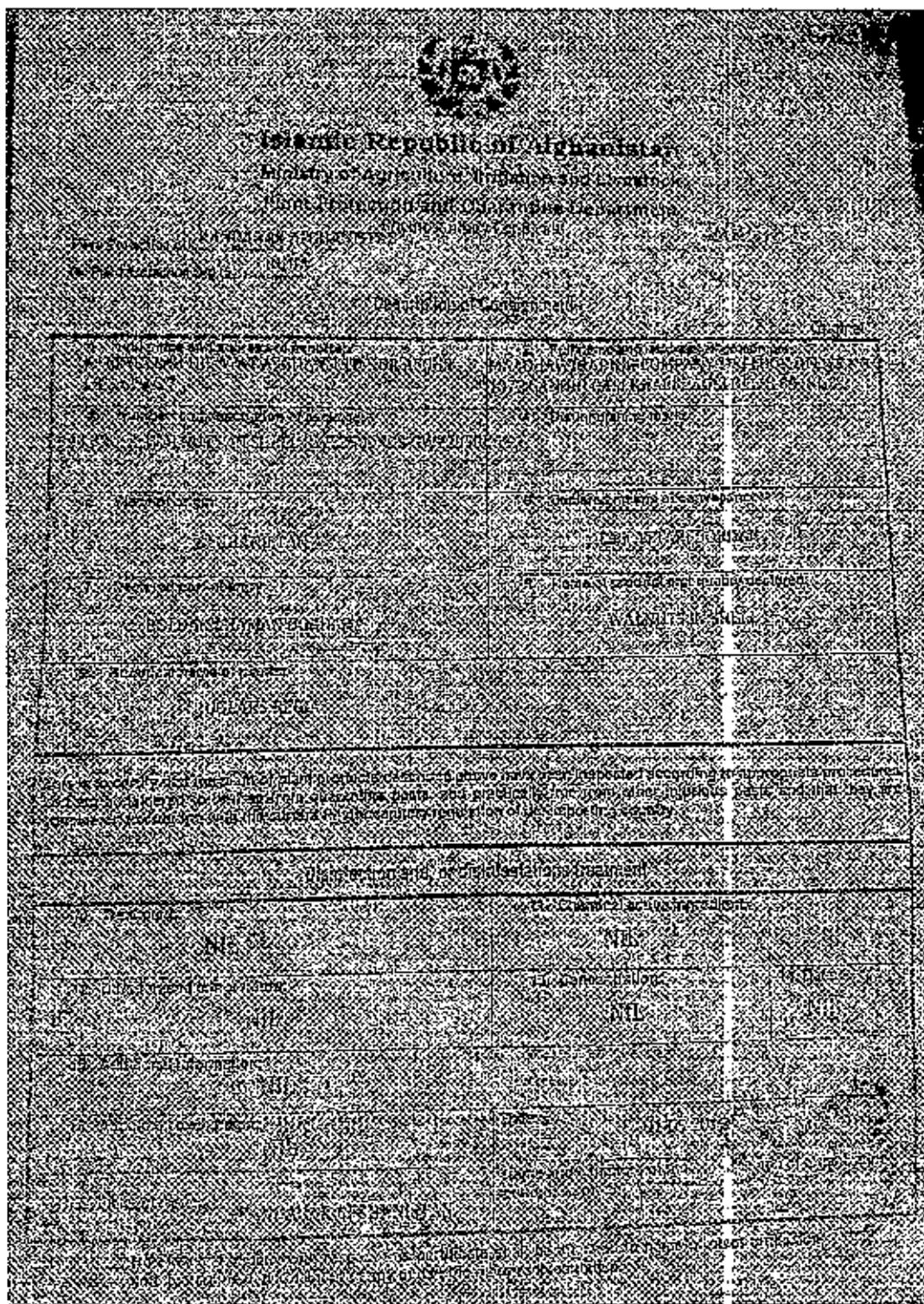
No financial liability with respect this certificate shall be attached to the plant protection and quarantine department or to any of its officials in any case.

Phyto Sanitary Certificates (PSC) No. 202493 dated 09/05/2019 submitted by the importer at the time of import show disinfection and, or disinfestation

treatment as (10) Treatment - Fumigation, (11) Chemical active ingredient - Methyl Bromide, (12) Duration and Temperature - 24 Hrs 21°C, (13) Concentration - 16 G/M, (14) Date - 07/05/2019 and (16) Additional information - Free from *Ershoviella Musculana* (Asian Walnut Moth).

Phyto Sanitary Certificates forwarded by Islamic Republic of Afghanistan

(2)



Phyto Sanitary Certificates (PSC) No. 202981 dated 01/05/2019 forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan through email [showdisinfection](#)

and, or disinfestation/treatment as MENTIONED in every column from 10-16 of the Certificate:

(2A) Phyto Sanitary Certificates submitted by the importer at the time of Import



Islamic Republic of Afghanistan
Ministry of Agriculture, Irrigation and Livestock
Plant Protection and Quarantine Department
KANDAHAR AFGHANISTAN
Phyto-sanitary Certificate
Plant Protection
To: Plant Protection Org. (S): **India**

No. **202981**

Description of Consignment

Original:	
1. Full name and address of exporter: KABIRUL AHMAD HAYAT AFGHAN LTD KDR AFGHAN LIC. NO: 2029-37	2. Full name and address of consignee: SHRI SURENDRA KUMAR 260011 BOX 1-2-16 OPPED DR HIGH SCHOOL, HATDO PURA, NEAR MADHIGRAH, Agra, U.P. INDIA
3. Number and description of packages: 800 PKGS. WALNUTS IN SHELLS, 2000 GMS EACH	4. Distinctive markings:
5. Place of origin: AFGHANISTAN	6. Declared means of conveyance: BY AIR (KABUL) TO MUMBAI PORT INDIA
7. Declared port of entry: HOLDIKAH, KASHMIR, INDIA	8. Name of product and quality declared: WALNUTS, UNSHELLED
9. Botanical name of plants: JUGLANS SP.	
I declare to certify that the plant or plant products described above have been disinfested according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests and that they are considered to conform with the current Phyto-sanitary regulation of the importing country.	
Disinfection and/or disinfestation treatment:	
10. Treatment: FUMIGATION	11. Chemical active ingredient: METHYL BROMIDE
12. Duration and temperature: 24 HRS 210° C	13. Concentration: 100%
14. Date: 13-05-2019	
15. Additional information:	
16. Additional declaration: FREE FROM ERICOTTELLA MUSCILLAN AFGHAN WALNUT MOTH	
17. Place of issue: KANDAHAR AFGHANISTAN	
No. Financial liability with respect this certificate shall be attached to name of plant protection and quarantine department or to any of its officers or representatives.	



Phyto Sanitary Certificates (PSC) No. 202981 dated 13/05/2019 submitted by the importer at the time of import show disinfection and, or disinfestation treatment as **(10) Treatment = Fumigation, (11) Chemical active ingredient = Methyl Bromide, (12) Duration and Temperature = 24 Hrs 210° C, (13)**

Concentration = 16 G/M, (14) Date = 11/05/2019 and (16) Additional information = Free from *Er-schoviaella Musculana* (Asian Walnut Moth).

Phyto Sanitary Certificates forwarded by Islamic Republic of Afghanistan

(3)

Phyto Sanitary Certificates (PSC) No. 202494 dated 09/05/2019 forwarded by
IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine
Directorate, Islamic Republic of Afghanistan through email show disinfection

and, or disinfection/treatment as NIL in every column from 10-16 of the Certificate.

(3A) Phyto Sanitary Certificates submitted by the importer at the time of Import

  Islamic Republic of Afghanistan Ministry of Agriculture, Irrigation and Livestock Plant Protection and Quarantine Department KANDAHAR AFGHANISTAN Phyto Sanitary Certificate Plant Protection of: INDIA To: Plant Protection Day (S):	
No: 202494	
Description of Consignment	
Original	
1. Full name and address of exporter NAEEMULLAH HDAYAT AFGHAN LTD KORANGHS SIC NO: 1029-27	2. Full name and address of consignee KOUSHAUS MEDICALANTIC COMPLEX SFTUA OPPENDA HIGH SCHOOL, BANDOLPUR, KAR MADHIM, AFGHANISTAN AFGHANISTAN
3. Number and description of Package: 800 PCS - 10KG TIN SHELL NW 30000 KG G.W. 30000	4. Distinguishing marks:
5. Place of origin: AFGHANISTAN	6. Declared means of conveyance: BY SEAWAY/SHIP TO MUNDRA PORT INDIA
7. Declared port of entry: BOLDAK CHAM BORDA	8. Name of product and quality declared: WALNUTS IN SHELL
9. Botanical name of plants: JUGLANS	
<p>I declare to certify that the plant or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests, and that they are considered to conform with the current phyto sanitary regulation of the importing country.</p>	
Disinfection and/or disinfestation treatment	
10. Treatment: FUMIGATION	11. Chemical active ingredient: METHYL BROMIDE
12. Duration and temperature: 24 HRS 21°C	13. Concentration: 16 G/M3
14. Date: 09/05/2019	
15. Additional Information:	
16. Additional declaration: FREE FROM ERISHOVILLA MUSCULARIS (ASIAN WALNUT WORM)	17. Name and address of certifying authority: Plant Protection Day (S)
18. Place of issue: KANDAHAR AFGHANISTAN	19. Signature of certifying authority: [Signature]
<p>No financial liability with respect this certificate shall be attached to name of plant protection and quarantine department or to any of its officers or representatives.</p>	

Phyto Sanitary Certificates (PSC) No. 202494 dated 09/05/2019 submitted by the importer at the time of import show disinfection and, or disinfestation treatment as (10) Treatment: Fumigation, (11) Chemical active ingredient - Methyl Bromide, (12) Duration and Temperature - 24 Hrs 21°C, (13)

Concentration – 16 G/M, (14) Date – 07/05/2019 and (16) Additional information – Free from *Ernchovilella Musculana* (Asian Walnut Moth).

Thus, it appears on comparison of the Phyto Sanitary Certificates as submitted by the importer at the material time of import and the scanned copy as received from IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan through email that M/s. Kesar Spices had presented tampered or manipulated certificates in as much as there is difference in the details provided in column from 10-16 of the Certificate in both the certificates. Also, in the Phyto Sanitary Certificates (PSC) No. 202981 dated 01/05/2019 forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan, under the details of Full Name and Address of Consignee it is mentioned as 'Maadhav Trading Company, 1st Floor, 1072, Gandhi Gali Khari Baoli, Delhi. Further, there is difference in the pattern of affixation of office seals in both the type of certificates.

ENQUIRY IN RESPECT OF COUNTRY-OF-ORIGIN CERTIFICATES:

22. DRI, Ahmedabad Zonal Unit, Ahmedabad vide letter F. No. DRI/AZU/CI/NQ-83(INT-26/2019)/2019 dated 04/09/2019, 22/04/2020, 27/01/2021 requested the Director (International Customs), Central Board of Excise and Customs, New Delhi to cause necessary verification of the COO certificates issued by the designated Afghanistan authority as there were significant mis-match in the signature appearing in the certificates submitted by the importer and that of the specimen signature received from the Board, through proper channel and the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate vide email dated 01/01/2020 had informed that the treatment with 'Methyl Bromide' (MB) shown in the Phyto Sanitary Certificates (PSC) submitted by M/s. Kesar Spices at the time of import were completely fake.

23. MODUS OPERANDI ADOPTED FOR EVASION OF CUSTOMS DUTY:

23.1 In view of the evidence and facts discussed in the foregoing paras, it appeared that M/s. Kesar Spices in active connivance of a Pakistan based trader, so called Mr. Ashmat, imported Walnuts of USA origin based on the manipulated documents. Pakistan based trader, Mr. Ashmat first imported the consignment of Walnuts from USA to Karachi, Pakistan and changed the packing and finally exported the same to India with manipulated documents showing Country of Origin as Afghanistan to evade the applicable Customs duty. Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices, Ahmedabad in active connivance with Pakistan based trader, Mr. Ashmat had arranged to import 'Walnuts (In-shell) of USA origin' first from USA to Karachi, Pakistan and then from Pakistan to India under fabricated COO Certificates to evade the applicable Customs duty. As per the understanding between Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices, Ahmedabad and the

Pakistan based trader, Mr. Ashmat, Mr. Ashmat, would arrange the fabricated Phyto Sanitary Certificates (PSC) and COO Certificates to be presented before the Customs authority and the Plant Quarantine Station, Department of Agriculture & Cooperation Farmers Welfare, at the time of import.

23.2 In the manner discussed herein above, Shri Suresh Bhatt, Proprietor of M/s. Kesar Spices, Ahmedabad, in connivance with Pakistan based trader, Mr. Ashmat, appeared to have evaded the Customs duty due to the Government Exchequer by way of arranging fabricated Phyto Sanitary Certificates (PSC) and COO Certificates for goods which originated in a country (USA) other than the certificate issuing country i.e. Afghanistan and produced the said COO certificates before the Customs authority at the time of import to wrongly claim the exemption from the duty of Customs under Notification No. 99/2011-Cus dated 09/11/2011.

24. EXEMPTION CONDITIONS:

24.1 The Notification No. 99/2011-Cus Dated 09/11/2011 exempts all goods other than those mentioned in the 'ANNEXURE' to the notification, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from a country listed in 'APPENDIX' to the notification. But as per the provision of said notification the importer has to prove to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of the origin of the countries as mentioned in Appendix, in accordance with the Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), 2006, published in the notification of the Government of India in the Ministry of Finance (Department Revenue) No 75/2006-Customs, (NT) dated the 30th June, 2006.

24.2 For the purposes of implementing the Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), 2006 certain Operational Certification Procedures on the issuance and verification of the SAFTA - South Asian Free Trade Area Certificate of Origin and the other related administrative matters shall be followed. The relevant procedures are reproduced below:

1. ARTICLE 4 - PRE-EXPORTATION VERIFICATION - *The Issuing Authority, upon a written request by the manufacturer and/or exporter of the products desirous for availing preferential treatment, shall conduct pre-exportation verification of the manufacturing premise(s). The result of the verification, subject to review periodically or whenever appropriate, shall be accepted as the supporting evidence in verifying the origin of the said*

products to be exported thereafter. Pre-exportation verification may not apply to the products, origin of which, by their nature, can be easily verified.

2. ARTICLE 5 - REQUEST FOR ISSUANCE OF CERTIFICATE OF ORIGIN

- At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or his authorized representative shall submit the Certificate of Origin duly filled together with appropriate documents supporting that the products to be exported qualify for the issuance of a Certificate of Origin.

3. ARTICLE 6 - PRE-EXPORTATION EXAMINATION - The Issuing Authority shall, to the best of their competence and ability, carry out proper examination upon each application for the Certificate of Origin to ensure that:

(a) The Certificate of Origin is duly completed and signed by the authorized signatory;

(b) The origin of the product is in conformity with the Rules of Origin of this Agreement;

(c) The other statements / entries of the Certificate of Origin correspond to supporting documentary evidence submitted;

(d) HS Code, f.o.b. value, description, quantity and weight of goods, marks, number and kinds of packages, as specified, conform to the consignment to be exported.

4. ARTICLE 12 - PRESENTATION - The Original Certificate of Origin shall be submitted to the Customs Authority at the time of lodging the import entry for the products concerned.

5. ARTICLE 18 - For the purpose of implementing Rule 12 of SAFTA Rules of Origin where transportation is effected through the territory of one or more non-

Contracting States, the following shall be produced to the Government authorities of the importing Contracting State:

(a) A through Bill of Lading/ Airway bill or corresponding transport document issued in the exporting Contracting State;

(b) A Certificate of Origin issued by the Issuing Authority of the exporting Contracting State;

(c) A copy of the original commercial invoice in respect of the product; and

(d) Supporting documents in evidence that the requirements of Rule 12 of SAFTA Rules of Origin are being complied with.

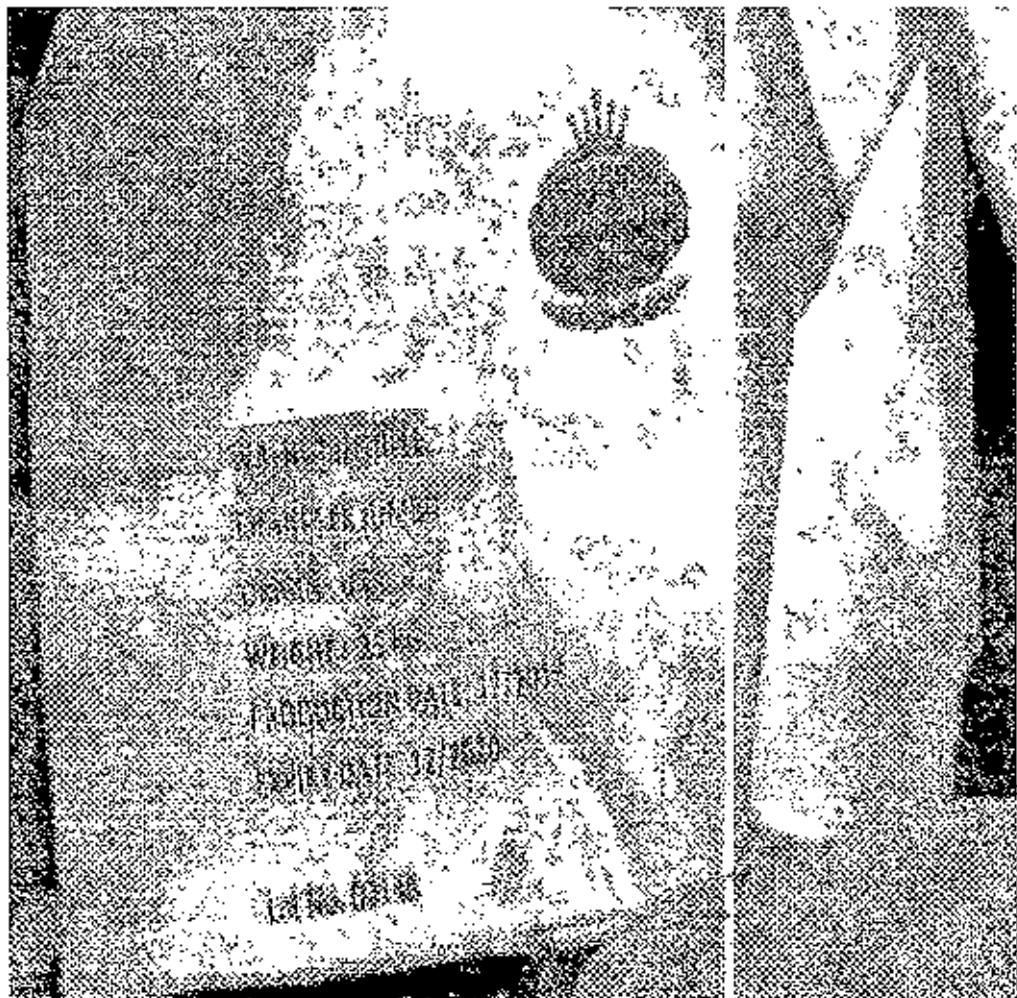
SUMMARY & ALLEGATIONS: -

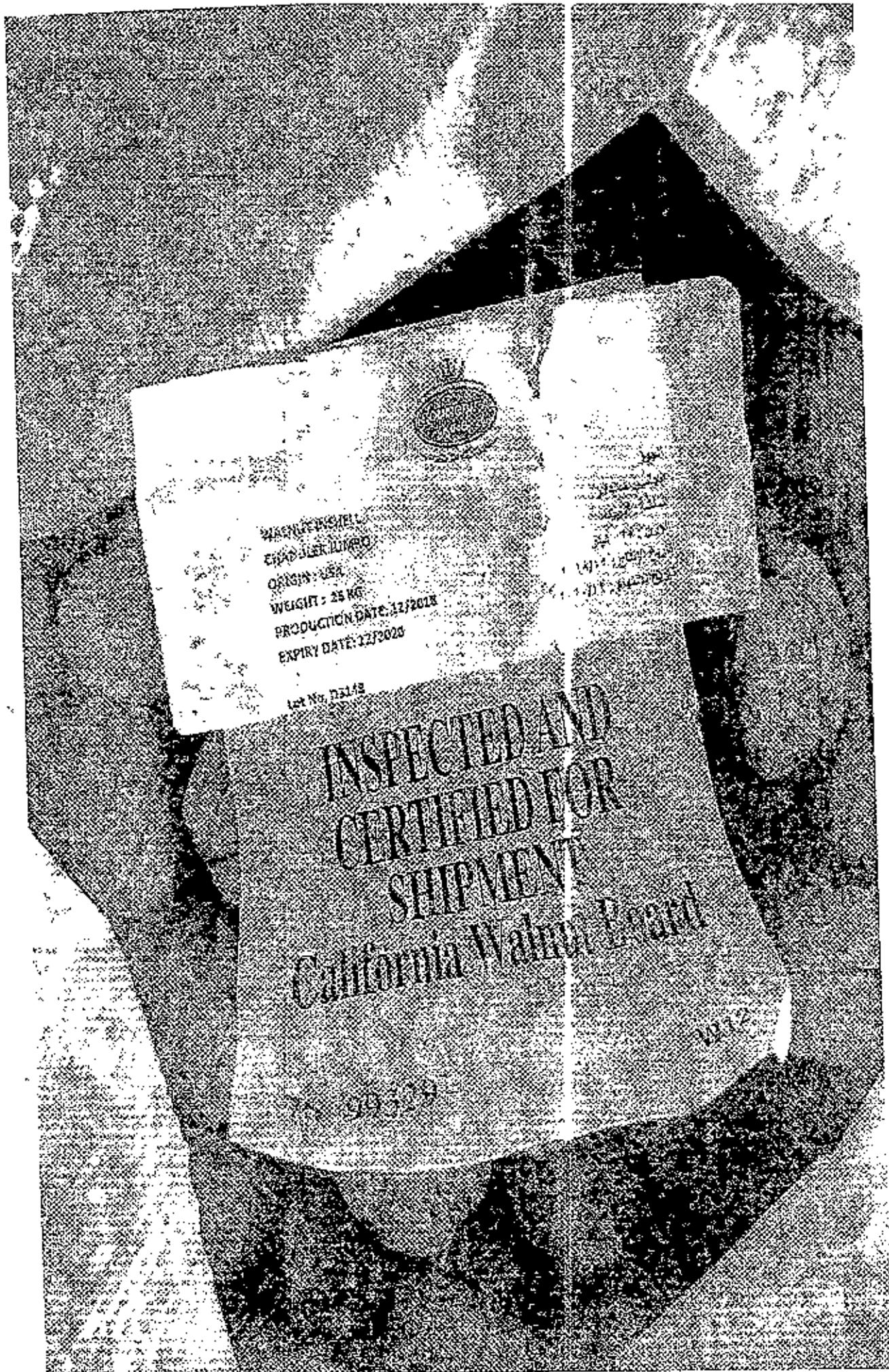
25. From the facts narrated in the foregoing paras and the material evidences available on record in the form of the email dated 25/12/2019 and 01/01/2020 forwarded by the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan, examination Panchnamas dated 10/07/2019 and 08/08/2019, statements of various concerned persons recoded, it appears that Shri Suresh Dharmashankar Bhatt had arranged fabricated COO certificates in connivance with Pakistan based trader Mr. Ashmat with intent to claim and avail the exemption from the duty of customs under SAFTA Notification No. 99/2011-Cus Dated 09/11/2011 wrongly and evade payment of Customs duty in contravention of the Customs law.

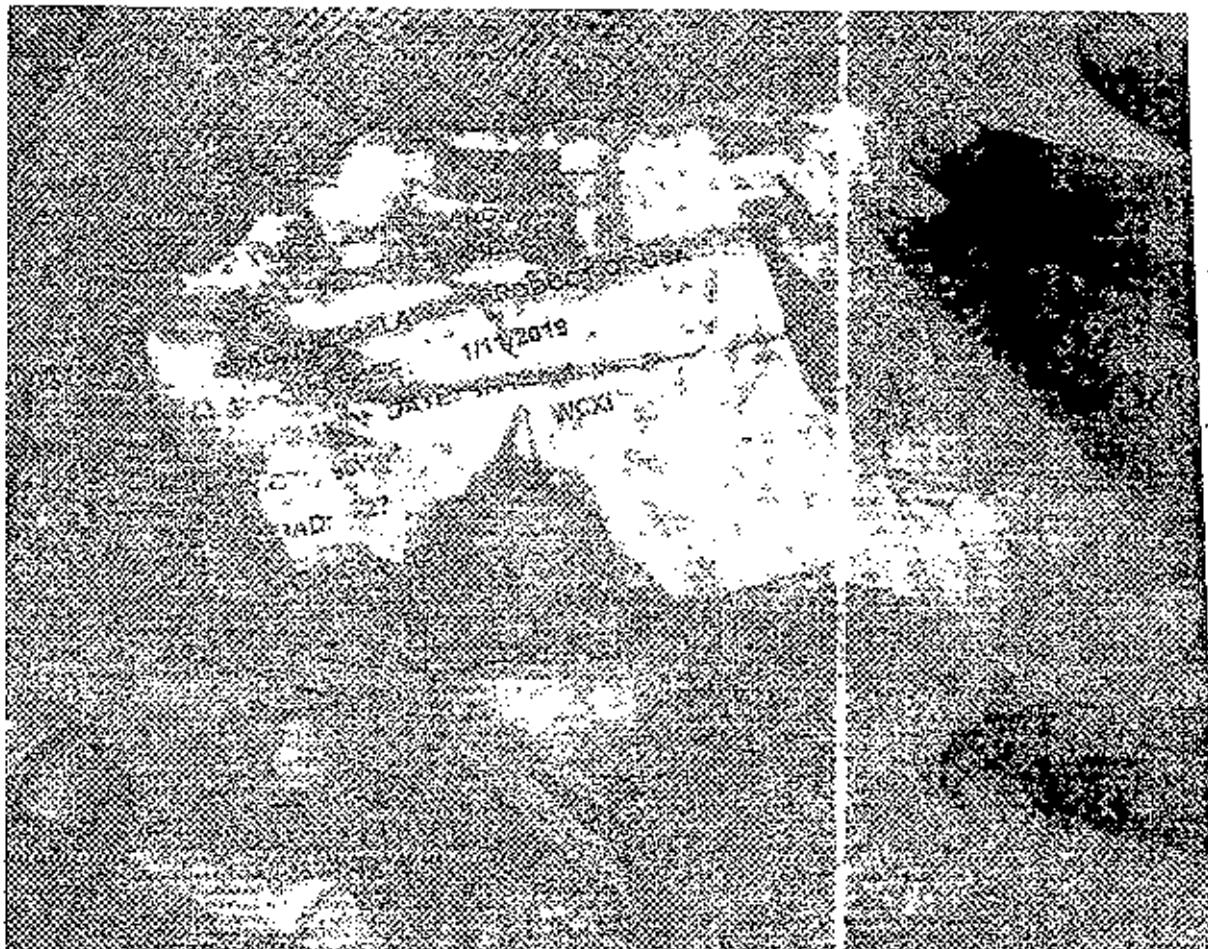
26. The wrong availment of exemption from the duty of customs under SAFTA Notification No. 99/2011-Cus Dated 09/11/2011, is evident from the following facts on record:

(A) PAPER SLIPS/PAPER TAGS STITCHED/ ATTACHED ON BAGS OR FOUND INSIDE THE BAGS CONTAINING WALNUTS (IN-SHELL) DURING THE EXAMINATION

26.1 The Paper Slips/paper Tags stitched/ attached on Bags or found inside the bags containing Walnuts (In-shell) during the examination of the goods imported vide Bill of Entry No. 3997006 dated 09/07/2019 under proper Panchnama dated 10/07/2019 and 08/08/2019. The Paper Slips/paper Tags stitched/ attached on Bags or found inside the bags containing Walnuts (In-shell) were showing "ORIGIN as USA", "INSPECTED AND CERTIFIED FOR SHIPMENT CALIFORNIA WALNUT BOARD" and "PRODUCT OF USA". The said Paper Slips/paper Tags clearly show that the goods were of USA origin. For the sake of clarity, the Paper Slips/paper Tags stitched/ attached on Bags or found inside the bags containing Walnuts (In-shell) are reproduced below:







It is evident from these Paper Slips/paper Tags that the goods were of USA origin.

(B) SUBMISSION OF MANIPULATED PHYTO SANITARY CERTIFICATES (PSC)

26.2 The IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan vide email dated 25/12/2019 and 01/01/2020 had informed that the treatment with 'Methyl

Bromide' (MB) shown in the Phyto Sanitary Certificates (PSC) submitted by M/s. Kesar Spices at the time of import were completely fake. Further, IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan had forwarded the scanned copies of the original Phyto Sanitary Certificates (PSC) issued to the exporter of Afghanistan and same are explained in above paras. The said emails confirmed that M/s. Kesar Spices had submitted manipulated Phyto Sanitary Certificates (PSC) before the Customs Authorities and the Plant Quarantine Station, Department of Agriculture & Cooperation Farmers Welfare, Ministry of Agriculture and Farmer's Welfare, Government of India.

(C) LETTER DATED 27/04/2019 OF M/S. KESAR SPICES, AHMEDABAD-VOLUNTARILY PAYMENT OF DUTY, INTEREST AND PENALTY IN ACCEPTANCE OF THEIR MISTAKE COMMITTED REGARDING MIS-DECLARATION OF COUNTRY OF ORIGIN AS AFGHANISTAN

26.3 M/s. Kesar Spices, Ahmedabad vide their letter dated 27/04/2019 voluntarily submitted the Demand Draft No. 009482 dated 24/07/2019 amounting to **Rs.87,05,435/- issued by the Axis Bank Ltd, Branch- Chandkheda, Ahmedabad for payment of Duty, applicable interest and Penalty **in acceptance of their mistake committed regarding mis-declaration of Country of Origin as Afghanistan, as goods imported were of USA origin.****

(D) STATEMENTS OF DOMESTIC BUYERS

26.4 One of the local walnut buyer Shri Ravi Patel, Proprietorship of M/s. Uma Trading Co., 6, Ground Floor, Madhupura Commercial Centre, Near Fountain Circle, Madhupur Chowk, Ahmedabad-380004 in his statement recorded on 04/09/2019 confirmed that Shri Sureshkumar Bhatt sold him (Shri Ravi Patel) old lot of 'California Inshell Walnuts' in the month of June, 2019 on the invoices of M/s. Kesar Spices, Ahmedabad. Further, he stated that they also purchased certain quantity of 'California Inshell Walnuts' from the same old lot of 'California Inshell Walnuts' from M/s. V H Traders, Deesa, Gujarat on the reference of Shri Sureshkumar Bhatt. Other buyer Shri Vishal Harishbhai Joshi, Proprietor of M/s. V H Traders, 10, Pavan Complex, B/H UCO Bank, Pavan Corner, Deesa, Banaskantha, Gujarat - 385535 in his statement recorded on 06/01/2020 confirmed that he had purchased the Walnut Inshell from M/s. Kesar Spices and M/s. Mahalaxmi Agro Industries, Unjha on the suggestion of Shri Suresh Kumar Bhatt.

(E) CALL DATA RECORDS FROM SERVICE PROVIDERS:

26.5 On scrutiny of call details records, it noticed that Shri Suresh Bhatt **was not in contact with any mobile number/landline number of Afghanistan** and was in contact with mobile Nos./Landline Nos. **of Pakistan**; whereas the contact no. provided in the Commercial Invoice issued by the so claimed exporter M/s. Kalimullah Hidayat Afghan Ltd., Kandhar, Afghanistan was +93-707721005. On scrutiny of call details, it was observed that various calls either received or made by Shri Suresh Kumar Bhatt to International numbers were on mobile 923032763535, 923214447868, 923205361010, 923007096850, 922132418316, and 923224828448 with international calling prefix of **Pakistan (+92) only** and not to Afghanistan (+93). It clearly appears that Shri Suresh Bhatt was in contact with Pakistan based person and not with any person belonged to Islamic Republic of Afghanistan.

(F) NON-REMITTANCE OF FOREIGN EXCHANGE TO OVERSEAS SUPPLIER

26.6 The Importer had not provided the bank statements and relevant legitimate documents showing payments made to overseas supplier **against the said imports from Afghanistan** vide Bills of Entry No. 3385021 dated 25/05/2019 and 3997006 dated 09/07/2019. The Importer had stated that he had bank account in Axis Bank bearing Account No. 913020019047844 and submitted bank statement for the period from 25/05/2019 to 10/08/2019 from which it appears that there was no payment corresponding to imports made through this bank account.

CULPABILITY AND LIABILITY OF NOTICEE (S)

27. From the facts discussed in the foregoing paras and material evidences available on record, it transpires that the importer had imported USA origin “WALNUTS IN SHELL” falling under CTH 08023100 by routing the same through Pakistan and by declaring the same as Afghanistan produce and had resorted to mis-declaration of COO by producing the manipulated / fabricated COO certificates before the Customs authority at the time of imports, with an intent to wrongly avail the benefit under Notification No. 99/2011-Cus dated 09/11/2011 and to evade Customs duty leviable thereon. The COO certificates produced by the importer before the Customs authority to claim the benefit of exemption under the said notification when imported into the Republic of India were fabricated and it is evident from the records that the goods were originated from USA. The IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan vide email dated 25/12/2019 and 01/01/2020

had informed that the treatment with 'Methyl Bromide' (MB) shown in the Phyto Sanitary Certificates (PSC) submitted by M/s. Kesar Spices at the time of import were completely fake. The fact of mis-declaration of Country of Origin had been corroborated by various other evidences such as statements of domestic buyers, the fact that the importer had never contacted any Afghanistan based person for orders or supply of goods through either email or call, the fact that the importer had not produced any Bank statement showing legal foreign remittances or advances to overseas Afghanistan based supplier.

28. In the instant case, DRI, Ahmedabad and Plant Quarantine Station, Mundra - Kutch, Gujarat, Department of Agriculture & Cooperation Farmers Welfare, Ministry of Agriculture and Farmer's Welfare, Government of India had requested the Head of Quarantine and Plant Protection Department, IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate regarding genuineness of the Phyto Sanitary Certificates (PSC) issued by the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, in response to that the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate vide email dated 25/12/2019 and 01/01/2020 had informed that the treatment with 'Methyl Bromide' (MB) shown in the Phyto Sanitary Certificates (PSCs) submitted by M/s. Kesar Spices at the time of import were completely fake. In view of above, it clearly appears that all the Phyto Sanitary Certificates (PSCs) and other documents like Country-of-Origin (COO) Certificates submitted by the importer were manipulated and fabricated with an intent to avail undue benefit of exemption of Customs Duty.

29. In terms of Section 46(4) of Customs Act, 1962, the importer is required to make a true and factual declaration as to the contents of the Bills of Entry submitted for assessment of Customs duty. Before, submitting the Bills of Entry the importer was legally obliged to observe and ensure that he had declared true and factual contents in the Bills of Entry. In the instant case, M/s. Kesar Spices, Ahmedabad have deliberately mis-declared the Country of Origin as Afghanistan and produced fabricated/manipulated the Phyto Sanitary Certificates (PSCs) and COO certificates to avail the undue benefit of exemption under SAFTA Notification No. 99/2011-Cus dated 09/11/2011. Section 17(1) states that an importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods. Thus, by his act of omission and commission on part of M/s. Kesar Spices, Ahmedabad has violated/contravened the provisions of Section 46 and Section 17 of Customs Act, 1962, in as much as he failed to give true declarations and submitted certificate of origin of goods as Afghanistan whereas goods were of USA origin and thereby indulged himself in the evasion of customs duty by availing undue benefit of exemption under SAFTA

Notification No. 99/2011-Cus dated 09/11/2011, thereby failed to assess the correct duty payable. The imported goods are therefore liable to confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.

30. In view of the facts mentioned hereinabove, it appeared M/s. Kesar Spices, Ahmedabad have filed bills of entry under Section 46 of the Customs Act 1962, for import of "Walnuts (In-shell)" by producing fabricated/ manipulated Phyto Sanitary Certificates (PSCs) and COO certificates and wrongly claimed and availed the benefit of exemption under SAFTA Notification No. 99/2011-Cus dated 09/11/2011 to avoid the payment of duty of Customs leviable thereon resorting to willful mis-statement and suppression of facts. As stated hereinabove M/s. Kesar Spices, Ahmedabad have despite knowing the fact that "Walnuts (In-shell)" imported by them was not of Afghanistan origin, but were of USA origin and the COO certificates produced by them were fabricated/manipulated, wrongly claimed and availed the benefit of exemption under Notification No. 99/2011-Cus dated 09/11/2011. Therefore, the Customs Duty amounting to **Rs. 2,01,61,753/-** as mentioned in **Annexure-A** to the SCN was liable to be recovered from M/s. Kesar Spices, Ahmedabad under Section 28 (4) of the Custom Act, 1962. Further the interest at the prescribed rate was liable to be recovered under Section 28 AA ibid. All the aforesaid acts of omission and commission on the part of M/s. Kesar Spices, Ahmedabad have rendered the subject imported goods totally valued at **Rs. 1,60,05,704/-** (as detailed in Annexure-A to the SCN) liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. M/s. Kesar Spices, Ahmedabad by their acts of omission as discussed above have rendered the goods liable to confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 and are therefore liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Further, the duty in the instant case has not been levied by reason of wilful mis-statement and suppression of facts, by M/s. Kesar Spices, Ahmedabad consequentially they are liable for penalty under Section 114A of the Customs Act, 1962. Also, they have knowingly or intentionally made and used, the fabricated and manipulated Country of Origin Certificates which is incorrect with material particulars as discussed in foregoing paras, hence are liable to penalty under Section 114AA of the Customs Act, 1962.

**ROLE OF SHRI SURESH BHATT, PROPRIETOR OF M/S. KESAR SPICES,
AHMEDABAD:**

31. It also appears that Shri Sureshkumar Bhatt, proprietor of M/s. Kesar Spices, Ahmedabad had imported the goods by mis-declaring the Country of Origin as Afghanistan and by producing fabricated/manipulated Phyto Sanitary Certificates (PSCs) and COO certificates to wrongly claim and avail the benefit of

notification no. 99/2011-Cus dated 09/11/2011. Shri Sureshkumar Bhatt had willfully mis-declared the COO in the Bills of Entry in contravention of the provisions of Section 46 (4) of Customs Act, 1962. Shri Sureshkumar Bhatt had actively involved himself in the act of mis-declaration of COO by arranging fabricated/manipulated Phyto Sanitary Certificates (PSCs) and COO certificates in connivance with Pakistan based trader. He was instrumental in manipulation/fabrication of documents presented before the Customs authorities with an intent to wrongly claim and avail the benefit of Notification No. 99/2011-Cus dated 09/11/2011 and to evade payment of Customs duty leviable thereon. Shri Sureshkumar Bhatt in connivance with Pakistan based trader imported "Walnuts (In-shell)" by mis-declaring the country of origin by producing manipulated/fabricated Phyto Sanitary Certificates (PSCs) and COO certificates deliberately as detailed in preceding paras for his personal enrichment. This fact has been corroborated by the evidences as detailed in preceding paras. He had full knowledge about the mis-declaration of the country of origin at the time of their import and had knowingly and consciously failed to declare the correct and actual country of origin before the Customs authorities at the time of import with the sole intention to wrongly claim and avail the benefit of Notification No. 99/2011-Cus dated 09/11/2011 and to evade payment of customs duty. Shri Sureshkumar Bhatt had indulged in the activities relating to mis-declaration in the import of "Walnuts (In-shell)" by M/s. Kesar Spices, Ahmedabad which resulted in evasion of huge amount of Customs duty. Further, during the course of investigation, it was revealed that Shri Sureshkumar Bhatt was the main beneficiary of the profit earned in the sales of the said imported "Walnuts (In-shell)". All the aforesaid acts of omission and commission on the part of Shri Sureshkumar Bhatt have rendered the impugned imported goods liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. Further, he had consciously dealt with the said goods which he knew or had reasons to believe, were liable for confiscation under the Customs Act, 1962. Thus, Shri Sureshkumar Bhatt has rendered himself liable for penalty under Section 112(a) and 112(b) of the Customs Act, 1962. Shri Sureshkumar Bhatt has knowingly and intentionally made, signed or caused to be made, signed and fabricated documents as discussed in detail hereinabove, which were presented to the Customs authorities which he knew, were false/fabricated and incorrect in respect of the origin of the goods imported. Hence the said act on the part of Shri Sureshkumar Bhatt rendered him liable for penalty action under Section 114AA of the Customs Act, 1962.

32. In view of the above, **M/s. Kesar Spices**, 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad – 380004 (IEC - 0813008875) and its proprietor Shri Sureshkumar Bhatt, were called upon to show cause in writing to **the Commissioner of Customs**, Mundra having

his office located at Custom House, Mundra, 5B, Port User Building, Mundra Port, Mundra, Gujarat – 370421 (Email-id: commr-cusmundra@nic.in), as to why:-

- (i) The Goods i.e. 'Walnuts (In-shell)' weighing 101250 Kgs, imported by wrongly claiming and availing benefit of exemption under Notification No. 99/2011-Cus dated 09/11/2011 as amended, totally valued at **Rs. 1,60,05,704/- (Rupees One Crore Sixty Lakhs Five Thousand Seven Hundred and Four only)** (as detailed in Annexure-A to the SCN, should not be held liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.
- (ii) Customs duty amounting to **Rs. 2,01,61,753/- (Rupees Two Crore One Lakh Sixty One Thousand Seven Hundred and Fifty Three only)**, as detailed in the Annexure 'A' to the show cause notice evaded by them on the goods imported by wrongly claiming and availing the benefit of exemption under notification No. 99/2011-Cus dated 09/11/2011 as amended, should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962.
- (iii) The **Customs Duty amounting to Rs. 85,60,628/- (Rupees Eighty Five Lakhs Sixty Thousand Six Hundred and Twenty Eight only)** already paid by them should not be appropriated and adjusted towards their duty liability.
- (iv) Interest should not be recovered from them on the said Customs duty, as at (ii) above, under Section 28 AA of the Customs Act, 1962.
- (v) The Interest amounting to **Rs. 59,807/- (Rupees Fifty Nine Thousand Eight Hundred and Seven only)** already paid by them should not be appropriated and adjusted towards their interest liability.
- (vi) Penalty should not be imposed on them under Section 112(a) and 112(b)/114A of the Customs Act, 1962.
- (vii) Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

33. DEFENCE SUBMISSIONS:

i) M/s Kesar Spices vide letter dated 13.06.2024 submitted their written reply. The same is being reproduced below:

ii) They denied all the allegations levelled against them and further stated that in spite of repeated written requests and reminders, the DRI has not provided them the documents pertaining to the present case as asked for in accordance with what has been stated in the show cause notice. However, they have neither received a reply from the DRI and nor been provided with a copy of such documents asked for and therefore, there has been a delay in replying to the show cause notice. Therefore, the delay shall not be construed against the deponent as it has only been caused due to the willful non-compliance of the DRI with the provisions of the show cause notice.

iii) They stated that a detailed para wise reply is not being preferred and they reserve their right to submit a detailed para wise reply once provided with all the documents that have been asked for from the DRI.

iv) In reply to para 1, they stated that M/s Kesar Spices was started in the year 2012 and was engaged in the business of importing and exporting dry fruits and spices. Therefore, what is stated in paragraph 1 is not denied by them.

v) They stated that the present case is pertaining to import of Walnuts (in-shell) which they had imported from Afghanistan and since as per the Notification No. 99/2011-Cus dated 09.11.2011 there was an exemption of duty to be paid on goods imported from Afghanistan, they had imported Walnuts (in-shell) of Afghanistan origin from his business associate M/s Kalimullah Hidayat Afghan Ltd KDR, Afghanistan which was run by Mr. Ashmatullah.

vi) As per Rule 4A of Rules of Determination of Origin of Goods under the Agreement on South Asian Free Trade Area (SAFTA), products wholly produced or obtained in the territory of the exporting Contracting State which includes Agriculture products grown in the contracting exporting state are eligible for exemption under the notification mentioned hereinabove. Therefore, the walnuts imported from Afghanistan qualified for this exemption under the notification dated 09.11.2011 since the same were being imported from the Islamic Republic of Afghanistan which is a contracting party to SAFTA.

vii) SAFTA certificate bearing No. 04715 and 04716 dated 14.05.2019 were produced by them upon import of such walnuts from contracting Afghanistan and therefore, was eligible for the exemption from payment of duty as per the notification dated 09.11.2011.

viii) The case against M/s Kesar Spices is that the goods were wilfully mis-declared as being from Afghanistan origin whereas the walnuts were of California, USA and the same was done to evade paying the applicable duty and wrongfully avail the benefit available to goods imported from Afghanistan, A SAFTA Country. The DRI had raided and confiscated the said container on 10.07.2019 and found walnuts in the container. It is alleged that in the said container, the DRI found three different stickers suggesting that the walnuts were of California origin. A Panchnama was also recorded confiscating the said container and these alleged stickers found in it.

ix) They further submitted that the entire case against them is false and fabricated. They stated that the walnuts are of Afghan origin and the requisite documents including the certificate of origin and bills of lading and have also been produced before the authorities which have been duly verified. It is these communications and verification of these documents that have not been provided to them herein. It is submitted that the Panchnama is a false panchnama and that there is no proof found that the goods (walnuts) are not of Afghan origin.

x) Further, they have submitted all documents with the DRI including the certificate of country of origin and the bills of lading amongst other documents which have all been verified by the DRI. That the entire case against Kesar Spices is based on the fact that three stickers were allegedly found in the container which state "California" on them and therefore, It is alleged that the entire container of walnuts were of Californian origin and mis-declared to be of Afghan origin to claim benefit under SAFTA and evade duty. There is no other proof or evidence on record to show that walnuts were not of Afghanistan origin. That these alleged stickers are also of different names and have been planted to frame the present deponent.

xi) Further, they submitted that the entire case built against them is Mala fide and the said stickers were planted in the consignment. That, the same is proven from the fact that the DRI officers raided the office premises of the deponent prior to even seizing or conducting panchnama at Mundra Port. That, the panchnama conducted at the office of the deponent was on 10.07.2019 at 11:30 hours whereas the Panchnama conducted at the port was at 12:30 hours. This proves that the DRI had raided the offices of the deponent even before they conducted and recorded the Panchnama of seizure of the consignment.

xii) When their office was raided, the DRI officials had come with a premeditated plan to extort money from the deponent and not only resorted to physically abusing him but also humiliated him in an inhumane manner. They had also preferred a complaint against the officers of the DRI and had also preferred a writ Petition before the Hon'ble High Court seeking transfer of investigation because

of the said abuse. The Hon'ble High Court in the said writ petition being SCRA No. 8263 of 2019 was pleased to allow the deponent to attend the summons of the DRI in presence of their advocate. That, since the beginning, there was a mala fide attempt on part of the officers to extort money from the deponent.

xiii) They stated that in paragraph 7, what is stated is completely denied. That, such payment of duty was done under duress and is in no manner an acceptance or admission on part of the deponent.

xiv) Further, the Panchnama conducted by the DRI states that goods came from America to Dubai and then to India. Whereas the file of the goods of declaration states that goods have come in to India through Pakistan. The container number also matches with the one seized and further, the DRI has also verified these documents. Hence, the case of the DRI has not been proven and to the contrary, the fact that the goods have come from Afghanistan has been proven.

xv) The communications inter se the departments wherein the DRI has verified the documents submitted by Kesar Spices have not been produced along with the RUD. It is submitted that all the documents produced are genuine. That the certificate of origin of the goods has been provided by Kesar Spices which has been duly verified by the DRI.

xvi) Since the entire case of the DRI is based on the allegation that the goods (walnuts) were allegedly of California origin and brought into India by mis declaring to be of Afghan origin to evade duty. In light of such allegations, the evidence that bears the most importance is the certificate of the origin of the goods.

xvii) An inquiry was made with the shipping line to track the container number of the deponent and the shipping line also verified that the container had indeed been exported from Afghanistan only. The same was communicated to the DRI by the shipping line vide e-mail, which is also forwarded to them by the shipping line. However, the same has not been made part of the documents relied upon by the DRI.

xviii) In the entire show cause notice, the allegation levelled against the deponent is that of forging the phyto certificate. However, the phyto certificate is not a determining factor for deciding the origin of the goods. Phyto certificate is a document given by an independent agency which declares that the goods are safe for consumption and an invalid phyto certificate does not invite the payment of duty or interest or fine as alleged in the show cause notice. That, the phyto certificate only declares that goods are pest free and safe for consumption, phyto certificate in no way is a proof of the country of origin. It is pertinent to note that the case against the deponent for which the deponent was made to deposit a huge sum towards the

evasion of duty is of mis-declaring the goods to be of Afghanistan origin and the only question to be decided in this case is what the country of origin of the goods is. It is submitted that the certificate of origin has been verified, the goods of declaration documents have been verified and therefore, there remains no question of the phyto certificate. The entire case of the DRI has been proven to be false and there is no evidence against the deponent of mis-declaring the goods imported.

xix) As per Customs Act, 1962 the origin of the goods is determined on the basis of certificate of origin issued by country of origin subject to verification.

xx) Therefore, personal hearing is required for them to disprove the case that the DRI has malafidely and falsely created against the deponent.

xxi) They should be given opportunity of the physical hearing; they will remain present with all the relevant documents that they are relying upon. They are innocent and they pray that the present show cause notice be quashed and set aside in light of the above.

34. Record of Personal Hearing:

'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order, Therefore, Noticees were given personal hearing on 24.12.2024. Shri Aniq Asif Kadri, Advocate and authorised persona of M/s. Kesar Spices and Shri Suresh kumar Bhatt appeared for personal hearing through virtual mode. During the personal hearing Shri Aniq Asif Kadri, Advocate stated that:

"As per the DRI, the case was that two containers were imported by M/s Kesar spicos. The two containers were having walnuts. The case of the DRI is that they were willfully mis-declared. Though the walnuts were Californian origin, they were shown to be of Afghanistan origin and the only basis of the same is that they had found three stickers in the two containers which stated California nuts. Thereafter both the containers were seized and that was the case.

He shared the screen. There were certain documents, he read the panchnama dated 10th of July 2019. This is the panchnama drawn at Mundra container freight station. He drew attention to the timing of the panchnama. It is on the 10th of July at around 12:30 hours. Interestingly, on the same day, the DRI had also raided their office. As per them, after they seized the container that they found this and they came to their office. However, the panchnama at their office at 11:30 on 10/7/2019. So it is their humble submission here, they had raided their office 1st

and thereafter it is alleged that certain stickers were found in the containers thereafter.

The second point is as far as the walnuts are concerned, the benefit was claimed as per the SAFTA rules for the duty benefit. The country of origin being Afghanistan. It is visible from the certificate of origin. Goods consigned from Kalimullah Hidayat, Afghanistan, Goods consigned to Kesar spices and No.12, Declaration by the exporter "The undersigned hereby declares that the above details and statements are correct that all the goods were produced in Afghanistan." Now, his submission is that this certificate of origin has also been verified by the DRI, however, the verification communication of the same has not been made part of the relied upon documents which is why they had been persistently writing letters to the DRI for them to be provided with those copies. The second is, the goods declaration file states that in transit to India via Karachi by sea and the port of shipment is Kandahar. The next page bears the stamp of the Pakistan Customs. It has come from Afghanistan transit. The same is for the second container as well. He opened an e-mail from the shipping line verifying that the particular cargo was stuffed at Afghanistan, Chaman, the case of the DRI is that these walnuts were actually imported from America and not from Afghanistan. They never entered Afghanistan. They were sent straight to Karachi and they were packed there and thereafter shipped to India. There's also another version where they say that the goods came from America to Dubai and then Dubai to India.

However, the goods declaration filed, the confirmation from the shipping line and the certificate of origin all point to one fact that the goods were of Afghanistan origin, shipped from Afghanistan Kandahar via Karachi port and then have entered India. It is also their case that when they raided their office that Mr. Suresh Bhatt in their presence had informed them that earlier also in May 2019, he had imported 3 containers, which were also of walnuts. Those three containers were cleared. They were cleared, they were imported, the goods were sold. Thereafter, when they came to their office, the duty has been collected for them. There is no evidence whatsoever on record. There is not even a sticker found in those containers. Those containers were not even seized. Those containers were cleared by the Customs department and thereafter after paying the due duty and claiming the benefit under the SAFTA, those goods were imported. In these two containers the only piece of evidence is these three stickers found. These three stickers found the photos of which are attached in the panchnama. He has not seen these stickers. It is the person in Afghanistan who has packed the container there at Kandahar. It has come to Karachi. It has not been opened in Karachi. It has come straight to India. So it is his case, that there is a certificate of origin which has been duly verified by the DRI. And as far as the dispute is regarding the origin of the goods,

because here the entire dispute is regarding the duty, had it been a California walnut, he would have had to pay higher duty, whereas since these walnuts were from Afghanistan, he was duly granted the exemption as per the SAFTA rules. So his humble submission is, that when a dispute is regarding the origin of the goods, the certificate of origin if verified, stands requisite proof to show that the goods were from Afghanistan.

He further stated that it is backed by the fact the goods declaration file also which states that it was packed in Afghanistan, came to Karachi and then to India and also the confirmation by the Shipping lines. So there leaves no room for doubt that these walnuts were of Afghanistan origin have come to Karachi and from Karachi have come to India, which is his case. So in his humble submission, there would be no liability on his client to pay any further duty. He is liable to get the exemption under the SAFTA rules for Afghanistan goods, the goods were imported. He has not been able to get the goods released even though he had paid the sufficient bank guarantee. The goods were the goods got spoiled. Since the nature of the goods are such, they remained at the port for so long and they were spoiled. So they have already faced a huge loss of two containers. They have not been able to sell the walnuts.

So this is the case of his client that the goods were originally from Afghanistan and he should get the advantage of the duty waiver as per the SAFTA Rules."

DISCUSSION AND FINDINGS:

35. I have carefully gone through the impugned Show Cause Notice SCN No. GEN/ADJ/COMM/11/2024-Adjn-O/o Pr. Commr- Cus-Mundra dated 13.02.2024 issued by the Pr. Commissioner of Customs, Custom House, Mundra, relied upon documents, legal provisions and the records available before me. The main issues involved in the case which are to be decided in the present adjudication are as below whether:

- (i) The Goods i.e. 'Walnuts (In-shell)' weighing 101250 Kgs, imported by wrongly claiming and availing benefit of exemption under Notification No. 99/2011-Cus dated 09/11/2011 as amended, totally valued at **Rs. 1,60,05,704/- (Rupees One Crore Sixty Lakhs Five Thousand Seven Hundred and Four only)** (as detailed in Annexure-A to the SCN, are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962.
- (ii) Customs duty amounting to **Rs. 2,01,61,753/- (Rupees Two Crore One Lakh Sixty One Thousand Seven Hundred and Fifty Three only)**, as detailed in the Annexure 'A' to the show cause notice evaded by them on the goods imported by wrongly claiming and availing the benefit of exemption under notification No. 99/2011-Cus dated 09/11/2011 as amended, are liable to

be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962.

- (iii) The Customs Duty amounting to **Rs. 85,60,628/- (Rupees Eighty Five Lakhs Sixty Thousand Six Hundred and Twenty Eight only)** already paid by them are liable to be appropriated and adjusted towards their duty liability.
- (iv) Interest is liable to be recovered from them on the said Customs duty, as at (ii) above, under Section 28 AA of the Customs Act, 1962.
- (v) The Interest amounting to **Rs. 59,807/- (Rupees Fifty Nine Thousand Eight Hundred and Seven only)** already paid by them is liable to be appropriated and adjusted towards their interest liability.
- (vi) M/s Kesar Spices and its proprietor are liable to be penalized under Section 112(a) and 112(b)/114A of the Customs Act, 1962.
- (vii) M/s Kesar Spices and its proprietor are liable to be penalized under Section 114AA of the Customs Act, 1962.

36. After having framed the main issues to be decided, now I proceed to deal with each of the issues herein below. The foremost issue before me is to decide in this case is as to whether Noticee has wrongly claimed and availed benefit of exemption under Notification No. 99/2011-Cus dated 09/11/2011 as amended, in respect of the imported goods i.e. Walnut (In-shell) and the same are liable for confiscation under section 111 (m) and section 111 (o) of the Customs Act, 1962.

37. Wrong availment of exemption notification and confiscation of goods:

- i) I find that as per specific inputs regarding wrong claim of exemption Notification No. 99/2011-Cus dated 09.11.2011 through mis-declaration of Country of Origin by M/s Kesar Spices, Bill of Entry No. 3997006 dated 09.07.2019 was put on hold by DRI.
- ii) During examination of the goods covered under Bill of Entry No. 3997006 dated 09.07.2019 under panchnama dated 10.07.2019, incriminating evidences in form of paper slips/paper tags stitched attached on bags or found inside the bags containing Walnut (in-shell) clearly indicated that the goods are of USA origin. Accordingly the goods were placed under seizure vide Seizure Memo dated 26.07.2019.

iii) Further, Search was carried out at the office premises under panchnama dated 10.07.2019 wherein Shri Suresh Bhatt informed that the supplier of Afghanistan Mr. Ashmat (probably owner of supplier firm M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan) during final discussion about the business had informed him that they (the supplier of Afghanistan) would arrange the documents showing Country of Origin as Afghanistan, whereas the goods will be of USA origin. Shri Suresh Bhatt also informed before the Panchas that Mr. Ashmat will first import the consignment of Walnuts from USA to Karachi, Pakistan and change the packing and finally export the same to India with manipulated documents showing Country of Origin as Afghanistan. Shri Suresh Bhatt also informed before the Panchas that he had also imported one consignment of Walnuts (In-shell) during May, 2019 vide **Bill of Entry No. 3385021 dated 25/05/2019** from the same supplier. The officers withdrew 02 mobile phones used by Shri Suresh Bhatt on reasonable grounds that the said mobile phones contain important data relevant to DRI inquiry under proper Panchnama and in sealed manner in presence of Panchas.

iv) I find that M/s Kesar Spices vide letter dated 27.07.2019 voluntarily submitted the Demand Draft No. 009482 dated 24/07/2019 amounting to Rs. 87,05,435/- issued by the Axis Bank Ltd, Branch- Chandkheda, Ahmedabad for payment of Duty, applicable interest and Penalty in respect of late filing of Bill of Entry in acceptance of their mistake committed regarding mis-declaration of Country of Origin as Afghanistan, as goods imported were of USA origin.

v) I find that the IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan vide email dated 25/12/2019 and 01/01/2020 had informed that the treatment with 'Methyl Bromide' (MB) shown in the Phyto Sanitary Certificates (PSC) submitted by M/s. Kesar Spices at the time of import of both Bills of Entry were completely fake. Further, IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Govt of Islamic Republic of Afghanistan had forwarded the scanned copies of the original Phyto Sanitary Certificates (PSC) issued to the exporter of Afghanistan. On comparison of the same with Phyto Sanitary Certificates as submitted by the importer at the material time of import it was found that there was difference in the details provided in column from 10-16 of the certificates. Also in the PSC No. 202981 dated 01.05.2019 forwarded by IPPC Official Contact Point of Afghanistan for Plant Protection and Quarantine Directorate, Islamic Republic of Afghanistan, under the details of Full Name and Address of Consignee it is mentioned as 'Maadhav Trading Company, 1st Floor, 1072, Gandhi Gali Khari Baoli, Delhi. Further, there was difference in the pattern of affixation of office seals in both the type of certificates. The said emails confirmed that M/s Kesar Spices had submitted manipulated Phyto Sanitary Certificates

(PSC) before the Customs Authorities and the Plant Quarantine Station, Department of Agriculture & Cooperation Farmers Welfare, Ministry of Agriculture and Farmer's Welfare, Government of India in case of both Bill of Entry.

vi) I find that during statement dated 04.09.2019, Shri Ravi Patel, Proprietor of M/s Uma Trading Co. confirmed that Shri Sureshkumar Bhatt sold him (Shri Ravi Patel) old lot of 'California Inshell Walnuts' in the month of June, 2019 on the invoices of M/s. Kesar Spices, Ahmedabad. Further, he stated that they also purchased certain quantity of 'California Inshell Walnuts' from the same old lot of 'California Inshell Walnuts' from M/s. V H Traders, Deesa, Gujarat on the reference of Shri Sureshkumar Bhatt. Other buyer Shri Vishal Harishbhai Joshi, Proprietor of M/s. V H Traders, 10, Pavan Complex, B/H UCO Bank, Pavan Corner, Deesa, Banaskantha, Gujarat - 385535 in his statement under section 108 of the Customs Act, 1962 recorded on 06/01/2020 confirmed that he had purchased the Walnut Inshell from M/s. Kesar Spices and M/s. Mahalaxmi Agro Industries, Unjha on the suggestion of Shri Suresh Kumar Bhatt. These statements corroborate the facts that goods covered under Bill of Entry No. 3385021 dated 25.05.2019 was also of USA Origin.

vii) Further, from the call details records of Sh Suresh Bhatt, it was found that he was not in contact with any mobile number of Afghanistan and was in contact with Mobile Nos/Landline Nos of Pakistan. On scrutiny of call details, it was observed that various calls either received or made by Shri Suresh Kumar Bhatt to International numbers were on mobile 923032763535, 923214447868, 923205361010, 923007096850, 922132418316, and 923224828448 with international calling prefix of Pakistan (+92) only and not to Afghanistan (+93). It clearly appears that Shri Suresh Bhatt was in contact with Pakistan based person and not with any person belonged to Islamic Republic of Afghanistan.

viii) The Importer had not provided any evidences in form of remittances made to overseas supplier against the said imports from Afghanistan vide Bills of Entry No. 3385021 dated 25/05/2019 and 3997006 dated 09/07/2019. The Importer had stated that he had bank account in Axis Bank bearing Account No. 913020019047844 and submitted bank statement for the period from 25/05/2019 to 10/08/2019 from which it implicates that there was no payment corresponding to imports made through this bank account.

ix) I find that during the statement of Shri Aakash Nair, Senior Executive of M/s Winwin Maritime Limited recorded on 21.10.2019 under section 108 of the Customs Act, 1962, he stated that M/s Allied Container Lines, Karachi had provided the containers mentioned in the Bills of Lading at Karachi only and the

cargo was stuffed from the Badaruddin Yard, Karachi and loaded from Karachi Port.

ix) Noticee vide letter dated 13.06.2024 and in personal hearing dated 24.12.2024 has contended that certificates of origin & bills of landing have been verified by DRI and were found genuine, however DRI has not provided them the verified documents. In this regard, ongoing through the records of the case, it has been found that DRI, AZU Ahmedabad, vide letter dated 04/09/19, 22.04.2020 and 27.01.2021 requested the Director (International Customs), CBEC, New Delhi to cause necessary verification of COO Certificate and obtain the necessary documents filed by exporter to ACCI. However, there is nothing on record that the sought documents were received to the DRI. Further, Noticee has also not submitted any facts/evidences corroborating their claim that verification documents have been received by DRI. Hence, it is evident and clear that Noticee has contended here purely on the basis of assumptions and speculations.

x) Further, Noticee has submitted that the alleged stickers of different names on the cargo have been planted by DRI to frame them. In this regard, I find that alleged stickers were found on bags during examination of the goods. The said examination was taken over by DRI under the witness of independent Panchas and the authorized representative of Custom Broker appointed by Noticee. The independent Panchas and representative of Customs Broker agreed with the content of panchnama and put their dated signature in token of correctness. Further, Noticee have never retracted to the panchnama findings during investigation. Seeing these facts, there remains no question of plantation of stickers on bags. Further, no independent evidence in support of plantation of stickers has been produced by Noticee. Hence, I find that the contention raised by Noticee is devoid of facts and merits.

xi) Noticee vide their defense letter has also contended that the entire case built against them is malafide and stickers were planted in the consignment as panchnama conducted at the office of the deponent was on 10.07.2019 at 11.30 whereas the panchnama conducted at the port was at 12.30 hours on the same day and thus DRI raided the office of Noticee before they conducted and recorded the panchnama of seizure of the consignment. In this regard, I find that there is no bar in searching the premises based on an intelligence for gathering the substantial evidences before the conclusion of the examination of the goods. The conducting of search at the office premises of Noticee before completion of examination of the goods doesn't prove the allegation that the case was framed with malafide intentions and stickers were planted. There is not a single piece

of evidence provided by Noticee to substantiate their allegation. Further, Noticee was present at the time of search and has duly signed the search Panchnama in token of the truth and correctness of the Panchanma. No such incidences happened during the search as recorded under Panchnama dated 10.07.2019 which indicate any truth in the story of plantation of stickers narrated by Noticee here. Hence, I find that the facts produced by the Noticee doesn't support his contentions and the same has no relevance here.

xii) Noticee further submitted that the payment of duty was done under duress and is no manner an acceptance or admission on part of the deponent. Ongoing through the fact of the case, it was found that search was conducted on 10.07.2019 and the letter regarding acceptance of mistake was given on 24.07.2019 after 17 days. Further, Noticee vide additional submission dated 06.02.2025 has stated that in the writ petition SCRA No. 8263 of 2019 they have stated on oath in his petition that he was made to sign the letter dated 24.07.2019 under duress and coercion. Ongoing through the writ petition and counter affidavit reply by DRI, it was found that all the allegations were denied by DRI. Further, the writ application was withdrawn by Noticee without final outcome of the case. Hence, the contention of Noticee that the letter was taken under duress was not proved in the court of law. Further, before filing the writ petition, the letter has never been retracted on record by the Noticee. Accordingly, I find no force in the contention raised by Noticee here.

xiii) Noticee further contended that in the entire show cause notice, the allegation levelled against the Noticee is that of forging the phyto certificate and the same is not a proof of country of origin. Here Noticee failed to appreciate the fact that allegation of mis-declaration of Country of Origin is not solely on the basis of forged Phyto Certificate. There were many incriminating evidences gathered during investigation, like stickers found on goods, statement of local traders recorded under section 108 of the Customs Act, 1962, call records, acceptance letter by Noticee and Non remittance of foreign exchange to prove the fact beyond doubt that goods were of USA origin. There is no denial regarding submission of forged Phyto-certificates by Noticee. The forged phyto-certificates further, strengthen the incriminating evidences found during the investigation. Hence, I find that the contention of the Noticee that the entire show cause notice is based on the charges of fake Phyto-Certificates is wrong and not sustainable.

xiv) There is a well settled principle of law that was pronounced by Hon'ble Tribunal in case of **Chennai Port (import) vs Sree Nakoda Enterprises**
Customs Appeal No. 40261/2023 decided on 31.05.2023:

"Section 123 of the Customs Act requires burden of proof in certain cases and in the light of our above discussion, the 'burden of proof' which has not been defined under the Customs Act, therefore, has to be looked into from the point of the Indian Evidence Act. When a statutory authority entertains a doubt, a Show Cause Notice will be naturally issued based on certain observations and it is for the noticee to satisfy and to prove that the observations / allegations of the statutory authority issuing such Show Cause Notice is wrong. The burden of proof, therefore, is always there on the noticee initially, which has to be discharged in the first place". In the current case, Noticee in his submission has raised the contention on the basis of assumption and presumption and hence failed to give valid defense in respect of each and every allegation.

xv) In view of the evidences i.e. labelled stickers found on the goods during the examination, acceptance of dealing with Pakistan trader and hatching conspiracy of arranging forged COO in search panchnama dated 10.07.2019, statement of local traders recorded under section 108 of the Customs Act, 1962 that they have purchased "California Inshell Walnut" from Suresh Bhatt in the month of June 2019, call records indicating that Noticee was never in touch of exporter from Afghanistan, fake/forged Phyto-sanitary certificate in case of both Bills of Entry, acceptance letter of Noticee regarding mis-declaration of Country of origin and statement of senior executive of M/s Winwin Maritime Limited recorded under Section 108 of the Customs Act, 1962 that containers mentioned in Bills of Lading were provided in Karachi and cargo was stuffed in Badaruddin Yard, Karachi, it remains an undisputed fact that the origin of the impugned goods were mis-declared as Afghanistan instead of USA in case of both Bill of Entry No. 3997006 dated 09.07.2019 and Bill of Entry No. 3385021 dated 25.05.2019. The preponderance of probability which emanates from the above cited facts and evidences points clearly in the direction of the imported goods to be of USA origin.

xvi) I find that Notification No. 99/2011-Cus dated 09.11.2011 exempts all goods other than those mentioned in the 'Annexure' to the notification, from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India from a country listed in 'Appendix' to the Notification. But as per the provision of said notification the importer has to prove to the satisfaction of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the goods in respect of which the benefit of this exemption is claimed are of **the origin of the countries** as mentioned in the Appendix.

However, as I have held in the foregoing paras that the country of origin of the goods were mis-declared as Afghanistan and the same were found to be of USA origin. As USA has not been covered in the appendix of the Notification No. 99/2011-Cus dated 09.11.2011, I hold that the benefit of the same can't be extended to the goods covered under the impugned Bills of Entry.

xvii) Section 111(m) stipulates that 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 shall be liable for confiscation. In this case, in respect of both Bills of Entry i.e. 3385021 dated 25.05.2019 and 3997006 dated 09.07.2019, the goods were found to be mis-declared in terms of country of origin hence the same are liable for confiscation under Section 111 (m) of the Customs Act, 1962,

xviii) Section 111(o) stipulates that any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer, shall be liable for confiscation. In this case, in both the Bills of Entry i.e. 3385021 dated 25.05.2019 and 3997006 dated 09.07.2019, Noticee failed to fulfil the main condition of the notification that the exemption claimed are of the origin of the countries as mentioned in appendix i.e. Afghanistan. Further, various incriminating evidences found during investigation as discussed in foregoing paras, proves the goods to be of USA Origin beyond any doubt. Accordingly, I hold that goods covered under both Bills of Entry 3385021 dated 25.05.2019 and 3997006 dated 09.07.2019 are liable for confiscation under Section 111 (o) of the Customs Act, 1962.

xix) As the goods are liable for confiscation, it is indispensable to examine the applicability of redemption fine on goods under Section 125 of the Customs Act, 1962 covered under both Bills of Entry.

a) SECTION 125. Option to pay fine in lieu of confiscation. –

Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law /or the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation on such fine as the said officer thinks fit.

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2)[Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges, payable in respect of such goods.]

(3)[Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation. - For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

b) At this point, one has to understand that there cannot be a demand of duty, where the goods are seized and are in the possession of the government. It is a basic principle that goods and duty travel together. Thus, when the goods are in the possession of the government having been seized, there cannot be a demand for duty. Duty payment, even differential duty payment arises when the goods are confiscated and ordered for release to the importer. Section 125(2) which provides that *where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods*, makes this above position clear.

Thus, the proviso which is inserted in Section 125 referring to cases under Section 28 which are essentially in respect of demand of duty where the goods are not seized/ detained by the department, gives room for interpretation that Redemption fine is imposable even if the goods are not seized and are not available for confiscation.

Further, these points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

Further, In the case of M/s Venus Enterprises vs CC, Chennai 2006(199) E.L.T. 661(Tri-Chennai) it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the misdeclaration in respect of the parallel invoices issued prior to the date of filing of the Bills of Entry. Hence, there is misdeclaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

In case of Synergy Fertichem Ltd vs Union of India, reported in 2020 (33) G.S.T.L 513 (Guj.) has relied on the judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.) and held that "we would like to follow the dictum as laid down by the Madras High Court".

Further, Hon'ble Supreme Court in the landmark judgment in case of Weston Components Ltd. v. Commissioner of Customs, New Delhi, (2000) 1 SCC 565 = 2000 (IIS) E.L.T. 278 (S.C.) held that

"it is contended by the Learned Counsel for the appellant that redemption Due could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed would not take away the power of the customs authorities to levy redemption fine."

Hence, from the above discussion and relying on the above judgments, I find that in respect of goods either not available for confiscation or released on the execution of Bond are liable for confiscation, fine can be imposed.

c) In case of Bill of Entry No. Bills of Entry 3385021 dated 25.05.2019, the goods were released for home consumption and hence are not available for confiscation. However, in view of the above discussions and judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)], & Synergy Fertichem Ltd vs Union of India, reported in 2020 (33) G.S.T.L 513 (Guj.), I hold that fine can be imposed under Section 125 of the Customs Act, 1962.

d) Further, in case of Bill of Entry No. 3997006 dated 09.07.2019, goods were not cleared for home consumption. Goods were seized vide seizure memo dated 26.07.2019. Later on permission for provisional release of the goods were given on submission of Bond and Bank Guarantee. Hence, in view of the landmark judgment of Apex Court in case of Weston Components Ltd. v. Commissioner of Customs, New Delhi, (2000) 1 SCC 565 = 2000 (IIS) E.L.T. 278 (S.C.) I hold that fine under Section 125 of the Customs Act, 1962 can be imposed in respect of goods covered under Bill of Entry No. 3997006 dated 09.07.2019.

38) Duty Demand under Section 28 (4) of the Customs Act, 1962

i) The present Show Cause Notice has been issued under the provisions of Section 28(4), therefore it is imperative to examine whether the section 28(4) of Customs Act, 1962 has been rightly invoked or not. The relevant legal provisions of Section 28(4) of the Customs Act, 1962 are reproduced below: -

"28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.—

(4) 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.

The term "relevant date" For the purpose of Section 28 ibid, has been defined in Explanation 1, as under:

Explanation 1 . - For the purposes of this section, "relevant date" means,-

- (a) in a case where duty is 21[not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;
- (b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
- (c) in a case where duty or interest has been erroneously refunded, the date of refund;
- (d) in any other case, the date of payment of duty or interest.

ii) I find that Noticee has actively involved himself in the act of mis-declaration of COO by arranging fabricated/manipulated Phyto Sanitary Certificates/COO certificates in connivance with Pakistan based trader. This has been corroborated by various evidences gathered during investigation i.e. call recording, statement of local traders, non-remittances of foreign exchange etc. Further he had full knowledge about the mis-declaration of the country of origin at the time of import as evident from the acceptance of his mistake vide letter dated 24.07.2019, the acceptance of the fact during panchnama dated 10.07.2019 that he was in full knowledge of the manipulated documents & original country of origin of the goods and statement of local traders who have purchased the USA origin Walnut from Noticee. Hence, it is proved beyond doubt that he has willfully misstated in collusion with the overseas supplier and suppressed the material facts in contravention to the section 46 (4) of the Customs Act, 1962. Accordingly, I hold that differential duty can be demanded under Section 28 (4) of the Customs Act, 1962.

iii) I find that the said provision of Section 28 (4) of the Customs Act, 1962 provides that duty can be demanded by proper officer within five years from the relevant date. Thus, I find that Section 28(4) *ibid* provides mechanism to demand duty during the period starting from the relevant date and within five years from such relevant date. The relevant date has been defined in above mentioned Explanation-I of Section 28. I find that in this case of **Bill of Entry No. 3385021 dated 25.05.2019**, goods have been cleared and attend finality in terms of assessment under Section 17 of the Customs Act, 1962. Hence, the demand of differential duty under section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 is appropriate.

iv] However, in case of **Bill of Entry No. 3997006 dated 09.07.2019**, the goods were put on hold and later on permission for provisional release on the request of Noticee was granted after submission of Bond and BG. Hence it is clear that final order for clearance of the goods has not been granted under Section 47 *ibid*. In view of clause (a) of the said Explanation-1, I find that the relevant date in this case will start from the date on which proper officer of Customs will make an order for the clearance of impugned goods.

At this juncture, I would like to refer a judgement of Hon'ble CESTAT Principal Bench Delhi in case of **EVERSHINE CUSTOMS (C & F) PVT LTD vs COMMISSIONER OF CUSTOMS in CUSTOMS APPEAL NO. 51320 of 2019** wherein the Tribunal has answered a question "Can a differential duty can be demanded under section 28(4) on the goods even before the goods have been cleared for home consumption? The relevant portion of the said judgement is as under:-

"32. Evidently, if the order clearing the goods for home consumption was not issued, the assessment is still open and the goods are still imported goods assessable to duty under section 17. There cannot be any demand under section 28. In the present case, the goods were not yet cleared. The importer (or his CB) filed a Bill of Entry self-assessing the duty which has been found to be erroneous. The duty has to be reassessed and a speaking order has to be passed by the proper officer. If the officer of DRI is also the proper officer [under Section 28(11) or otherwise] and has done the reassessment, he must pass a speaking order.

Any SCN under Section 28 can only arise after the goods have been cleared for Home Consumption and not before. This is because a demand under section 28 is in the nature of review of the assessment already done under section 17 by the proper officer. Without the assessment under section 17 being completed, there cannot be review under section 28 and the relevant date under

section 28 for reckoning the time limit has not yet arisen. For this reason, the demand under section 28 in respect of the goods which have not yet been cleared for home consumption cannot be sustained and the answer to the question (c) which we raised is 'No demand under section 28 can be issued unless the goods have been cleared for home consumption and hence the demand does not sustain'."

v) The above judgment of Hon'ble Tribunal strengthens my view that in case where assessment under section 17 has not been completed, proceeding of demand of Demand of duty under Section 28(4) can't be initiated. In case of Bill of Entry No. 3997006 dated 09.07.2019, till date no final order for clearance of impugned goods has been granted, just permission for provisional release have been granted to the Noticee on submission of Bond and BG. hence assessment under section 17 is not completed.

In view of the above discussions, I find it premature to demand the duty under Section 28(4) ibid, as this Section would kick in only after completion of assessment under section 17 of the Customs Act, 1962. I allow re-assessment Bill of Entry No. 3997006 dated 09.07.2019 after denying the benefit of Notification No. 99/2011-Cus dated 09.11.2019 with consequential duty and interest if any, under Section 17(4) of Customs Act, 1962, which shall be recoverable from Noticee M/s Kesar Spices.

39. Appropriation of amount deposited during investigation

i) In the foregoing paras, I have held that for Bill of Entry No. 3385021 dated 25.05.2019, the demand of duty under section 28 (4) of the Customs Act, 1962 along with interest under section 28(AA) of the Customs Act, 1962 is sustainable. Further, I have allowed reassessment in case of Bill of Entry No. 3997006 dated 09.07.2019 after denying the benefit of Notification No. 99/2011-Cus dated 09.11.2019 with consequential, duty and interest if any, under Section 17(4) of Customs Act, 1962.

ii) I also observe that during investigation, Noticee has deposited Rs. 85,60,628/- and Rs 59,807/- against the liability of Duty and interest. I hold that the same is liable to be appropriated and adjusted towards their liability of duty & interest against the confirmed demand of duty/interest and consequential duty/interest raised after re-assessment as discussed in above paras.

40. Imposition of Penalty under Section 112 (a), 112 (b), 114A and 114AA of the Customs Act, 1962.

i) Now I come to examine the penalty imposable on M/s Kesar Spices and Shri Suresh Bhatt, Proprietor of M/s Kesar Spices separately under each alleged section.

ii) I find that Section 112 (a) of the Customs Act, 1962 stipulates that 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 for penalty for improper importation of the goods.

iii) Further Section 112 (b) of the Customs Act, 1962 stipulates that who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable for penalty for improper importation of the goods.

iv) Section 114 A of the Customs Act, 1962 stipulates that:

*"Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has 2 [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful 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 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined."*

As per 5th proviso of Section 114A, penalties under section 112 and 114A are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable

In respect of Bill of Entry No. 3385021 dated 25.05.2019

v) I find that M/s Kesar Spices through its proprietor have filed bills of entry under section 46 of the Customs Act, 1962 for import of "Walnuts (in-shell)" by producing fabricated/manipulated Phyto Sanitary Certificates and COO certificates and wrongly claimed the benefit of exemption under SAFTA Notification No. 99/2011-Cus dated 09.11.2011 to avoid the payment of duty of Customs leviable thereon resorting to wilful mis-statement and suppression of facts. They were fully aware that the goods imported by them are not of Afghanistan Origin as evident from their acceptance in panchnama dated

10.07.2019, letter of acceptance dated 24.07.2019 and statement of local traders recorded under section 108 of the Customs Act, 1962. Since, Noticee M/s Kesar Spices has resorted to the wilful mis-statement and suppressed the material facts to evade the duty which is recoverable under Section 28(4) of the Customs Act, 1962, the mandatory provision of penalty under Section 114(a) of customs act, 1962 is invokable. Further their willful omission and commission have rendered the goods liable for confiscation under Section 111 (m) and (o) of the Customs Act, 1962. Hence, penalty under Section 112 of the Customs Act, 1962 can be imposed. However as per fifth proviso of Section 114(a), penalties under section 112 and 114(a) are mutually exclusive. When penalty under section 114A is imposed, penalty under Section 112 is not imposable. Accordingly, I refrain to impose penalty under Section 112A and 112B of the Customs Act, 1962 on M/s Kesar Spices.

It is pertinent to mention here that it has been held in the judgment of **Hon'ble High Court of Karnataka in case of Commission of Customs and Service Tax, Bangalore vs M/s Sony Sales Corporation** 2021(376) E.L.T. 472(Kar) that word 'or' can't be interpreted as 'and' for the imposition of penalty under Section 114 (a) of the Customs Act, 1962. Hence, the quantum of penalty can't be interpreted as equal to duty and interest instead of duty or interest. The same view was taken by CESTAT Bangalore in case of **IBM India Pvt Ltd vs Commissioner of Central Excise and Customs, Bangalore** 2023(12) RMT 382.

vi) Section 114AA of the Customs Act, 1962 stipulates that 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 purpose of this act shall be liable to a penalty. In this case, Noticee has produced/used fake/forged Phyto-sanitary certificate and COO certificate despite having knowledge that goods are not of Afghanistan origin, hence they have rendered themselves liable for penalty under Section 114AA of the Customs Act, 1962.

vii) Further I find that in the Show Cause Notice, penalty under Section 112A, 112B, 114A and 114AA has been proposed on Sh Suresh Bhatt, proprietor of M/s Kesar Spices. However, in the foregoing paras, I have held that M/s Kesar Spices is liable to be penalized under section 114A and 114AA of the Customs Act, 1962. Since M/s Kesar Spices is a proprietorship firm and Shri Suresh Bhatt is the sole proprietor, they can't be treated as different entity. The imposition of penalty on proprietorship firm and its proprietor both will rather amounts to double jeopardy. Hence, without discussing the offences made by Sh Suresh Bhatt separately and treating M/s Kesar Spices and its proprietor a single entity, I refrain to impose dual

penalty on them for same offenses. I place reliance on the following judgment to support my view:

a) Shri Shahid Ali vs Pr. Commissioner of Customs (Import) (CESTAT Delhi) in appeal no. 50105 of 2016 pronounced on 02.06.2021 where it was held that

"We further observe that the adjudicating authority has imposed penalty on the importing firm as well as the proprietor thereof, we are of the opinion that **the same rather amounts to the double jeopardy**. The penalty cannot be imposed against the sole proprietor of proprietorship firm along with the penalty upon said firm. We rely upon the judgement of Delhi High Court in the case of *Anil Kumar Mahensaria vs. Commissioner of Customs* reported as [2008 (228) ELT 166(Del)] wherein it was held that only one set of penalty can be imposed either on the appellant or upon his proprietorship firm"

b) M/s Noor Mohammad and Brothers vs Commissioner of CGST & Central Excise in Excise Appeal No. 77731 of 2018 pronounced on 21.03.2023 wherein it was held that:

"Having heard learned counsel for the parties, we are of the considered opinion that **proprietorship firm or proprietor thereof cannot be treated as two different legal entities**. Partnership firm is a firm in mercantile usage, however, penalty imposed on the proprietorship or partnership firms would mean penalty on the proprietor or partners thereof, therefore, imposition of penalties one on the proprietorship and second on the proprietor would amount to imposition of penalty twice, which can't be sustained in the eyes of law."

c) Commissioner of Customs, Ahmedabad vs Raj Traders (CESTAT Ahmedabad) in Customs Appeal No. C/10537/2018-DB pronounced on 20.06.2018 wherein it was held that:

"Moreover it is a settled law that a separate penalty cannot be imposed on the proprietor when the penalty on proprietorship firm has been imposed"

In respect of Bill of Entry No. 3997006 dated 09.07.2019

viii) I have held in foregoing paras that differential duty can't be demanded under Section 28(4) of the Customs Act, 1962. Further, I have held that Bill of Entry No. 3997006 dated 09.07.2019 is to be re-assessed after denying/removing the Notification No. 99/2011-Cus dated 09.11.2011 with consequential duty which will be recovered from M/s Kesar Spices. Since duty can't be demanded under Section 28 (4) of the Customs Act, 1962, penalty under Section 114(a) also can't be imposed. Further I have also held that goods covered under Bill of Entry No. 3997006 dated 09.07.2019 are liable for confiscation under Section 111(m) and 111 (o) the Customs Act, 1962. I have also discussed in the foregoing paras, that it is proved beyond doubt that Importer has actively involved himself and

resorted to the willful misstatement and suppression of facts to evade the customs duty. Such act of omission and commission has rendered the goods liable for confiscation, Hence Noticee M/s Kesar Spices has also rendered themselves liable for penalty under Section 112 (a) of the Customs Act. Further, I find that imposition of penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962 simultaneously tantamount to imposition of double penalty. In case of **M/s Birendra Kumar Gupta vs Commissioner of Customs (prev) Kolkata 2025 (1) TMI 959, CESTAT Kolkata** has held that both the provisions of Section 112 (a) and (b) of the Customs Act, 1962 can't be applied together. Hence, I refrain from imposing penalty under Section 112 (b) of the Customs Act, 1962 on M/s Kesar Spices. As discussed in foregoing paras, it is proved beyond doubt that Noticee has produced/uscd fake/forged Phyto-sanitary certificate and COO certificate despite having knowledge that goods are not of Afghanistan origin, hence they are liable for penalty under Section 114AA of the Customs Act, 1962.

ix) For the reasons discussed in para 40 (vii) I refrain from imposing the penalty on Shri Suresh Bhatt treating M/s Kesar Spices and its proprietor Shri Suresh Bhatt a single entity. So the last issue before me has been decided in this case.

41. In view of the above, I pass the following order:

Order

41.1 In respect of Bill of Entry No. 3385021 dated 25.05.2019

i) I hold that the Goods i.e. 'Walnuts (In-shell)' imported by wrongly claiming and availing benefit of exemption under Notification No. 99/2011-Cus dated 09/11/2011 as amended, covered under Bill of Entry No. 3385021 dated 25.05.2019, totally valued at **Rs. 1,00,44,264/- (Rupees One Crore Forty Four Thousand Two Hundred Sixty Four only)** (as detailed in Sr. No. 1 of Annexure-A to the SCN), are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. Further I impose fine of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** under Section 125 of the Customs Act, 1962 for the reasons discussed above.

ii) I confirm the differential duty amounting to **Rs. 1,21,03,338/- (Rupees One Crore Twenty One Lakh Three Thousand Three Hundred and Thirty Eight Only)** determined in terms of the provisions of Section 28(8) read with Section 28(4) of the Customs Act, 1962 with applicable interest under section 28AA of the Customs Act, 1962 which is recoverable from Noticee M/s Kesar Spices.

iii) I impose penalty of **Rs. 1,21,03,338/-** (*Rupees One Crore Twenty One Lakh Three Thousand Three Hundred and Thirty Eight Only*) on M/s Kesar Spices under Section 114A of the Customs Act, 1962.

iv) I impose penalty of **Rs. 7,00,000/-** (*Rupees Seven Lakh Only*) on M/s Kesar Spices under the provisions of Section 114AA of the Customs Act, 1962.

41.2 In respect of Bill of Entry No. 3997006 dated 09.07.2019

i) I hold that the Goods i.e. 'Walnuts (In-shell)' imported by wrongly claiming and availing benefit of exemption under Notification No. 99/2011-Cus dated 09/11/2011 as amended covered under Bill of Entry No. 3997006 dated 09.07.2019, totally valued at **Rs. 59,61,440/-** (*Rupees Fifty Nine Lakh Sixty One Thousand Four Hundred and Forty Only*) (as detailed in SR No. 2 of Annexure-A to the SCN), are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962. Further I impose fine of **Rs. 6,00,000/-** (*Rupees Six Lakh Only*) under Section 125 of the Customs Act, 1962 for the reasons discussed above.

ii) I hold that demand and recovery of differential duty amounting to **Rs 85,60,628/-** (*Rupees Eighty Five Lakh Sixty Thousand Six Hundred Twenty Eight Only*) in respect of the goods covered under Bill of Entry No. 3997006 dated 09.07.2019 under the provision of Section 28(4) of the Customs Act, 1962 prior to completion of assessment of goods under section 17, is premature, thus I do not demand the same under said provision. Accordingly, the proposal to demand interest on such duty under Section 28AA of the Customs Act, 1962 is also premature, thus I also don't demand the same under said provision.

iii) I order to re-assess Bill of Entry No. 3997006 dated 09.07.2019 after removing the benefit of Notification No. 99/2011-Cus dated 09.11.2011 with consequential duty of **Rs 85,60,628/-** (*Rupees Eighty Five Lakh Sixty Thousand Six Hundred Twenty Eight Only*) and interest if any, under Section 17(4) of Customs Act, 1962, which shall be recoverable from M/s Kesar Spices.

iv) I impose penalty of **Rs. 7,00,000/-** (*Rupees Seven Lakh Only*) on M/s Kesar Spices under the provisions of Section 112 (a) (ii) of the Customs Act, 1962.

v) I impose penalty of **Rs 5,00,000/-** (*Rupees Five Lakh Only*) on M/s Kesar Spices under the provisions of Section 114AA of the Customs Act, 1962.

41.3 I order to appropriate/adjust deposited amount of **Rs. 86,20,435/-** (*Rupees Eighty Six Lakh Twenty Thousand Four Hundred Thirty Five Only*) against their liability of duty and interest towards the confirmed demand of duty/interest and consequential duty/interest raised after re-assessment.

41.4 I refrain from imposing any penalty under Section 112(a)/112(b)/114A/114AA on Shri SureshKumar Bhatt, proprietor of M/s Kesar Spices for the reasons discussed above.

42. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force



(K. Engineer)

Principal Commissioner of Customs,
Custom House, Mundra

By RPAD/Hand Delivery/Email/Speed Post/ Notice Board

To the Notices:

1. M/s. Kesar Spices,
116, Madhukant Complex-2, First Floor, Opposite Hindi High School,
Bardolpura, Near Madhupura, Ahmedabad – 380004.
2. Shri Sureshkumar Bhatt, proprietor of M/s. Kesar Spices,
116, Madhukant Complex-2, First Floor, Opposite Hindi High School,
Bardolpura, Near Madhupura, Ahmedabad – 380004.

Copy to:

- 1) The Additional Director, Directorate of Revenue Intelligence, Zonal Unit, 15, Magnet Co-operate Park, Near Sola Bridge, S.G. Highway, Thaltej, Ahmedabad-380054, for information.
- 2) The Deputy Commissioner of Customs, CCO, Ahmedabad.
- 3) The Deputy/Assistant Commissioner (EDI), Customs House, Mundra.
- 4) The Deputy/Assistant Commissioner of Custom, TRC, Mundra
- 5) Notice Board
- 6) Guard File.