



**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
PHONE : 02838-271426/271428
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A	File No.	CUS/APR/ASS/2878/2024-Gr 1-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AKM/233/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner, (Import Assessment), Custom House Mundra.
D	Date of order	18.12..2024
E	Date of Issue	30.12..2024
F	SCN No. & Date	Importer requested for waiver in PH & SCN
G	Noticee / Party / Importer	M/s Shree Santosh Enterprises (IEC No.MPTPK5370K), 46 Durga Puram Garh Road, Noble Public School Meerut - 250004
H	DIN	DIN - 20241271MO0000017010

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.

**The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road Ahmedabad-380009**

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

Brief facts of the case

M/s Shree Santosh Enterprises (IEC No.MPTPK5370K), (hereinafter referred to as '**the importer**' for sake of brevity) having address at 46 Durga Puram Garh Road Noble Public School Meerut - 250004, had filed Home Consumption (H) Bill of Entry No. 5940374 dated 04/10/2024 for import of goods declared as 'KIWI (FRESH FRUIT)' under CTH-08105000 through their authorised Customs Broker M/s. SVARAD LOGISTICS INDIA PRIVATE LIMITED, CB code AAWCS4216RCH001 (hereinafter referred as 'the CB' for sake of brevity). The details of the B/E are as follows:

Sr No.	B/E No. & date	Bill of Lading No. & Date Container No.	Declared Goods	Quantity (as declared)	Declared Assessable Value (in Rs.)
1.	5940374 dated 04/10/2024	03700261/10004042/25 dated 03.10.2024	KIWI (FRESH FRUIT)	168000 KGs	1,20,02,728.5

2. On the basis of intelligence, the container nos. CLSU9000136, CLSU9142763, CLSU9142830, CLSU9142974, CLSU9143100, CLSU9143369 & LELU5519041 were put on hold to rule-out any prohibited / restricted goods concealed behind / within the declared goods. The examination of the goods was carried out at Saurashtra CFS, Mundra on 09.10.2024 in the presence of Shri Dungdiya Babulal, Operations Senior Executive in Saurashtra CFS and Javed Khan Pathan, G Card holder of M/s Svarad Logistics India Pvt Ltd, the Customs Broker in respect of the present consignments. The line bottle seals were cut open and on opening, it on opening it is found that there are a large number of white plastic crates in the containers. They were de-stuffed with the help of labours provided by Shri Dungdiya Babulal, Operations Senior Executive, Saurashtra CFS, Mundra. After de-stuffing, the crates were segregated and counted as per packing list dated 27.09.2024. As per packing list and invoice goods of Container were are as follows:-

S NO.	Container Number	Description of goods	Nos. of plastic carats	Net Weight(kg)
1	CLSU9000136	Kiwi	2400	24000
2	CLSU9142763	Kiwi	2400	24000
3	CLSU9142830	Kiwi	2400	24000
4	CLSU9142974	Kiwi	2400	24000
5	CLSU9143100	Kiwi	2400	24000
6	CLSU9143369	Kiwi	2400	24000
7	LELU5519041	Kiwi	2400	24000
Total			16,800	1,68,000

The crates in warehouse were examined. On opening the crates, goods were prima facie found to be matching with packing list. Further, no other item or any concealment was found during the course of examination.

3. As per the provisions of Clause 3(1) and 3(20) of the Plant Quarantine (Regulation of Import into India) Order, 2003, no plants, plant products can be imported into India without complying the phytosanitary conditions stipulated in the order. The relevant portion of the said clause is reproduced below for ease of reference:-

“3. Permits for Import of plants, plant products etc.

(1) No plants, plant products and other regulated articles (hereinafter referred to as „consignment“) shall be imported into India without complying the phytosanitary conditions stipulated under this Order. The order shall regulate import of all plants, plant products and other articles including but not limited to seeds/grains, pods, nuts, fruits, bulbs, tubers, corms/cormlets, rhizomes, suckers, cuttings, grafts, saplings, bud woods, roots, rootstock, flowers, pollens, dry plant materials, timber, wood, logs, tissue culture plants, soil, earth, clay, sand, peat/moss, live insects, microbial culture, bio-control agents, transgenic plants and genetically modified organisms etc.,

.....

(20) No consignment shall be permitted import unless accompanied by an original Phytosanitary Certificate issued by an authorized officer at the country of origin in PQ Form 21 or at the country of re-export in PQ Form 22;

Provided that cut flowers, garlands, bouquets, dry fruits/nuts etc., weighing not more than two kilograms imported for personal consumption may be allowed to be imported without a Phytosanitary Certificate or an import permit.

Provided that all consignments of Similar material: Inorganic soil additives, Leonardite, Lignite, Pure sand (Silica, Zircon, Quartz, etc.,) Pure clay like kaolin etc., Rock aggregates and Gravel, Volcanic pumice, Chalk, Rock salt, Diatomaceous earth, All kinds of ore, Vermiculite, Perlite, Gypsum, Zeolite etc., may be allowed to be imported in any form, for industrial and non agricultural purpose, without a Phytosanitary Certificate or an import permit.

4. Further, as per the provisions of clause 10(2) of the Plant Quarantine (Regulation of Import into India) Order, 2003, every consignment of plant species specified in Schedule-V, VI and VII is required to be accompanied by an original phytosanitary certificate. Kiwi has been specified in Schedule VI of the said order. Accordingly, original phytosanitary certificate is required in respect of import of Kiwi. Relevant portion of the same is reproduced below for ease of reference:-

“10. Special conditions for import of plant species -

(1) In addition to the general conditions listed above in Chapter-II, the plant species herein after mentioned in Schedule-V, VI and VII shall be permitted to be imported subject to such restrictions and conditions specified in this Chapter.

(2) Every consignment of plant species specified in Schedule-V, VI and VII shall be accompanied by an original Phytosanitary Certificate issued by the authorized officer at country of origin or Phytosanitary Certificate for re-export issued by the country of re-export along with attested copy of phytosanitary certificate from country of origin, as the case may be, with the additional declarations being free from pests mentioned under Schedule-V and VI of this order or that the pests as specified do not occur in the country or state of origin.

(3) The special conditions relating to treatment and freedom from soil and/ or weed as specified under Schedule V and VI shall be endorsed on such Phytosanitary certificate wherever applicable.”

5. The importer had furnished phytosanitary certificates in respect of imported goods as follows:-

S.No	Phytosanitary Certificate No. & date	Container No.
1	2525292 dated 27.05.2024	MNBU342631-2
2	2534111 dated 17.06.2024	MSWU104142-2

3	2548116 dated 18.07.2024	MNBU030675-6
4	2549287 dated 22.07.2024	MNBU900718-6
5	2551750 dated 26.07.2024	SUSU802149-9
6	2513950 dated 02.05.2024	MSDU900933-3
7	2542220 dated 05.07.2024	CRSU613394-3

6.1. To verify the authenticity of the phytosanitary certificates furnished by the importer, letter dated 15.10.2024 was sent to The Officer-in-Charge, Plant Quarantine Station, Mundra, Kutch, Gujarat. Reply in this regard was received vide e-mail dated 17.10.2024, vide which Annexure- I (Statement for verification of Phytosanitary Certificates of Chile (Origin) for Imported Kiwi Fruits) was provided. As per the said Annexure-I, it appears that phytosanitary certificate nos. 2548116 Dt. 18/07/2024 and 2542220 Dt. 05/07/2024 have been used multiple times. Further, Directorate of Plant Protection, Quarantine & Storage, Mundra, issued Deportation/Destruction Order dated 15.10.2024, which was received vide e-mail dated 16.10.2024. Vide the said order, deportation/destruction of the consignment imported vide BE No. 5940374 dated 04.10.2024 has been ordered. As per the said order, the nature of non-compliance is "*Consignment has been imported without valid phytosanitary certificate (Clause 3(1)/3(20) of the PQ Order, 2003 or both*". Further, in any other reason, it is stated as "*Repeated Use of COO PSC in Re-export UAE PSC*". Also, signing authority's remarks in the said order are "*Chile PSC no. 2548116 dated 18.07.2024 is already utilized at RPQS, New Delhi vide IRO No. IRO9NEW2024003781 and it is found that this PSC is repeatedly used and same also verified from updated Google sheet. Hence, it is case of multiple use of PSC. Therefore, Deportation Order Issued*".

6.2. The goods have been imported in contravention of the provisions of the Plant Quarantine (Regulation of Import into India) Order, 2003. Accordingly, they appear to be "prohibited goods" as defined in Section 2(33) of the Customs Act, 1962 as the condition of original phytosanitary certificate has not been fulfilled.

7.1. Since the goods have been imported in contravention of the provisions of the Plant Quarantine (Regulation of Import into India) Order, 2003, the goods appear to be liable to confiscation in accordance with the provisions of Section 111(d) of the Customs Act, 1962. Further, it also appears that the importer M/s. Shree Santosh Enterprises have rendered themselves liable for penalty under Section 112(a)(i) as the goods imported by them appear to be "prohibited goods" and are liable to confiscation under Section 111(d) of the Customs Act, 1962.

7.2. During the course of investigation, statement of Shri Javed Khan Pathan, G-Card holder of M/s. Savarad Logistics (I) Pvt. Ltd. and Authorised Representative of M/s. Shree Santosh Enterprises (IEC MPTPK5370K), was recorded on 27.11.2024, wherein, he inter-alia stated that:-

- His firm M/s. Savarad Logistics (I) Pvt. Ltd. had filed bill of entry no. 5940374 dated 04.10.2024 in respect of cargo imported by M/s. Shree Santosh Enterprises (IEC MPTPK5370K);
- M/s. Shree Santosh Enterprises had imported 1,68,000 kgs Kiwi (Fresh Fruit) falling under CTH 08105000;
- They had submitted the phytosanitary certificates provided to us by the supplier M/s. Golden Sea General Trading LLC, Dubai, UAE and they had no knowledge that PSC no. 2548116 dated 18.07.2024 had been earlier utilized. They came to know about the fact of earlier utilization of the above

referred PSC only after we received the above referred order dated 15.10.2024 after they submitted phytosanitary certificates to Plant Quarantine Station, Mundra, for obtaining No Objection Certificate from them;

- As per his understanding, PQS cannot order for partial release of consignment pertaining to a single bill of entry and accordingly, they have issued the above referred order dated 15.10.2024 for deportation/destruction of the entire consignment;
- M/s. Shree Santosh Enterprises had filed appeal against the above referred order before Directorate of Plant Protection, Quarantine and Storage, Faridabad. However, the appeal had been rejected vide their order dated 25.10.2024;
- M/s. Shree Santosh Enterprises do not want any Show Cause Notice or personal hearing and it is requested to waive the same and he further requested that the matter may be decided on merits.

8. LEGAL PROVISIONS

Legal provisions applicable in this case under the Customs Act 1962 are as follows:

8.1 Section 2(33) defined the terms "Prohibited Goods":

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

8.2 Section 2(39) defined the terms "smuggling":

"smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;

8.3. Section 111: Confiscation of improperly imported goods, etc. -

The following goods brought from a place outside India shall be liable for confiscation:

...

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

...

...

....

(o) 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;

8.4. Section 112: Penalty for improper importation of goods, etc.

Any person, –

(a) *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*

(b) *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 to confiscation under section 111,*

shall be liable, –

(i) *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

(ii) *in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;*

(iii) *in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*

(iv) *in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*

(v) *in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the*

highest.

8.5. Section 114 AA: Penalty for use of false and incorrect material. –

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

8.6 SECTION 125: Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised 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 for 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 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, 3 [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.

Discussion and Findings:

9. 1 M/s Shree Santosh Enterprises had filed Home Consumption (H) Bill of Entry No. 5940374 dated 04/10/2024 for import of goods declared as KIWI

(FRESH FRUIT)' under CTH-08105000 through their authorised Customs Broker M/s. SVARAD LOGISTICS INDIA PRIVATE LIMITED, CB code AAWCS4216RCH001. The said Bill of Entry contains "Kiwi (Fresh Fruit)" weighing 168000KGs having assessable value of Rs. 1,20,02,728.5/-.

9.2 On the basis of intelligence, the containers were put on hold to rule-out any prohibited / restricted goods concealed behind / within the declared goods. The examination of the goods was carried out at Saurashtra CFS, Mundra on 09.10.2024. After de-stuffing, the crates were segregated and counted as per packing list dated 27.09.2024.

9.3 As per the provisions of Clause 3(1) and 3(20) of the Plant Quarantine (Regulation of Import into India) Order, 2003, no plants, plant products can be imported into India without complying the phytosanitary conditions stipulated in the order. Further, as per the provisions of clause 10(2) of the Plant Quarantine (Regulation of Import into India) Order, 2003, every consignment of plant species specified in Schedule-V, VI and VII is required to be accompanied by an original phytosanitary certificate. Kiwi has been specified in Schedule VI of the said order. Accordingly, original phytosanitary certificate is required in respect of import of Kiwi.

9.4 To verify the authenticity of the phytosanitary certificates furnished by the importer, letter dated 15.10.2024 was sent to The Officer-in-Charge, Plant Quarantine Station, Mundra, Kutch, Gujarat. Reply in this regard was received vide e-mail dated 17.10.2024, vide which, it appears that phytosanitary certificate nos. 2548116 Dt. 18/07/2024 and 2542220 Dt. 05/07/2024 have been used multiple times.

9.5 Further, Directorate of Plant Protection, Quarantine & Storage, Mundra, issued Deportation/Destruction Order dated 15.10.2024, which was received vide e-mail dated 16.10.2024. Vide the said order, deportation/destruction of the consignment imported vide BE No. 5940374 dated 04.10.2024 has been ordered. As per the said order, the nature of non-compliance is "*Consignment has been imported without valid phytosanitary certificate (Clause 3(1)/3(20) of the PQ Order, 2003 or both*". Further, in any other reason, it is stated as "*Repeated Use of COO PSC in Re-export UAE PSC*". Also, signing authority's remarks in the said order are "*Chile PSC no. 2548116 dated 18.07.2024 is already utilized at RPQS, New Delhi vide IRO No. IRO9NEW2024003781 and it is found that this PSC is repeatedly used and same also verified from updated Google sheet. Hence, it is case of multiple use of PSC. Therefore, Deportation Order Issued*".

9.6 In view of the discussion in foregoing paras, it appears that The goods have been imported in contravention of the provisions of the Plant Quarantine (Regulation of Import into India) Order, 2003. Accordingly, they appear to be "prohibited goods" as defined in Section 2(33) of the Customs Act, 1962 as the condition of original phytosanitary certificate has not been fulfilled.

9.7 Since the goods have been imported in contravention of the provisions of the Plant Quarantine (Regulation of Import into India) Order, 2003:

- a. The imported goods, i.e. 168000 KGs "KIWI (FRESH FRUIT)" are liable for confiscation in accordance with the provisions of Section 111(d) of the Customs Act, 1962.
- b. The importer M/s. Shree Santosh Enterprises (IEC MPTPK5370K) is liable to penalty under Section 112(a).

SCN and Personal Hearing

10. As the importer has already requested for waiver of the show cause notice and personal hearing in the matter, necessary adjudication proceeding/action may be initiated in respect of the said Bill of Entry as per the Customs Act, 1962. Outcome of the recoveries made may please be intimated to this office.

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

ORDER

11.1 I order for confiscation of imported goods declared as "Kiwi" weighing 168000 Kgs having an assessable value of **Rs. 1,20,02,729/- (Rupees One Crore Twenty Lakh Two Thousand Seven Hundred Twenty Nine Only)** imported vide Bill of Entry No. 5940374 dated 04/10/2024 under Section 111(d) of the Customs Act, 1962. However, I give an option to the importer to re-export the confiscated goods on payment of redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs Only) under Section 125 of the Customs Act, 1962.

11.2 I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) on the importer M/s Shree Santosh Enterprises under section 112(a) (i) of the Custom Act, 1962.

12. This Investigation report is issued without prejudice to any other action that may be taken against the said goods/ persons under the provisions of Customs Act, 1962 or any other law for the time being in force in the Republic of India.

Signed by

AMIT KUMAR MISHRA

ADDITIONAL DIRECTORATE OF CUSTOMS
Date: 18/12/2024

18-12-2024

F. No.: CUS/APR/ASS/2878/2024-Gr.1

Date: 18.12.2024

To,
M/s Shree Santosh Enterprises (IEC No.MPTPK5370K),
46 Durga Puram Garh Road,
Noble Public School
Meerut - 250004

Copy to:

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra.
2. The Deputy Commissioner of Customs (TRC), Custom House, Mundra.
3. The Deputy Commissioner of Customs (EDI), Custom House, Mundra.
4. Guard File.