

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO. 1

Customs Appeal No. 10356 of 2025

(Arising out of OIO-MUN-CUSTM-000-44-24-25 dated 11.02.2025 passed by the
Principal Commissioner of Customs-Mundra)

M /s Kesar Spices

Suresh Bhatt, B Block, 402, Shri Sakat Valley,
Near Maple Parmeshwar, Chandkheda, Ahmedabad
Gujarat-382424

...Appellant

VERSUS

Commissioner of Customs-Mundra

Office of the Pr. Commissioner of Customs,
Custom House, Mundra, Kutch, Mundra Port
And Special Economic Zone, Mundra-Kuchchh-Gujarat-370421

...Respondent

APPEARANCE:

Shri Manish Jain, Advocate appeared for the Appellant
Shri Girish Nair, Assistant Commissioner (AR) appeared for the Respondent

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10336 / 2025

DATE OF HEARING: 02.04.2025
DATE OF DECISION: 14.05.2025

SOMESH ARORA:

The issue pertains to denial of exemption to payment of BCD, under Notification No. 99/2011-Cus dated 09.11.2011, read with Notification No.75/2006-Cus. Dated 30.06.2006 on the import of "Walnut-in Shell" (*hereinafter referred to as "**subject goods**"*) imported by M/s. Kesar Spices (*hereinafter referred to as "**Appellant**" having IEC NO. 0813008875*) from M/s. Kalimullah Hidayat Afghan Ltd., Kandahar, Afghanistan (*hereinafter referred to as "**Exporter**"*).

1.1 Notification No. 99/2011-Cus dated 09.11.2011 (*hereinafter referred to as "**Exemption Notification**"*) 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 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 (*hereinafter referred to as “SAFTA Rules”*).

1.2 It is the case of the department that the Appellant has fraudulently imported subject goods of US Origin by mis-declaring the country of origin as Afghanistan in order to wrongly avail the benefit of the Exemption Notification. The allegation was made by the department, relying upon the following:

- a. Paper Slips/paper Tags stitched/ attached on Bags or found inside the bags containing subject goods mentioned country of origin as USA in 3 out of more than 1600 bags.
- b. The IPPC office vide email dated 25.12.2019 and 01.01.2020 informed that Phyto Sanitary Certificates (PSC) submitted by the Appellant at the time of import were completely fake.

1.3 Accordingly, show cause notice dated 13.02.2024 was issued proposing the following:

- (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, valued at Rs. 1,60,05,704/- (Rupees One Crore Sixty Lakhs Five Thousand Seven Hundred and Four only) 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), on the goods imported by wrongly 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.

1.4 In the adjudication proceedings, the Ld. Principal Commissioner of Customs, Mundra, vide Impugned Order dated 11.02.2025 upheld the charges made in the SCN. Thus, the present appeal.

2. Party broadly made up the following grounds in its appeal:

Letter F. No.DRI/AZU/CI/ENQ-83(INT-26/2019)/2019 dated 27.01.2021 by DRI, Ahmedabad Zonal unit confirms that the Afghanistan Chamber of Commerce and Industries has issued a Certificate of Origin (COOs) in respect of imports by the Appellants. Thus the whole basis of SCN is factually incorrect.

2.1 It was submitted that said letter dated 27.01.2012 referred to the confirmation letter dated 08.01.2020 and 17.03.2020, wherein it is confirmed that said COOs were issued by Afghanistan Chamber of Commerce and Industry.

2.2 It was submitted that the exemption benefit cannot be denied in the presence of a valid COO issued by the competent authority. Reliance

in this regard is placed on the decision of **Scientific Suppliers Vs. C.C., Mundra, 2024 (2) TMI 741- CESTAT Ahmedabad**, wherein it was held as under:

*“6. Considered. We find that in the instant case, **the certificate was duly got verified through the Government to Government process and Malaysian authorities have not doubted the issuance of genuine certificate of origin nor its contents.** However, the department in the absence of cost data has placed the whole burden of proof on the appellants, despite documentary evidence coming to the fore by way of certificate of origin and getting verified by the Malaysian authority. It is clear that the cost data of Malaysian manufacturer having been provided or having been denied is a matter between Government to Government (G to G) and cannot be held against the appellants. In case the agreement between Malaysian Government and Indian Government had some provision for providing cost data of the supplier company, then such condition could have been taken up with the Malaysian Government and if needed the preferential duty agreement got cancelled for breach of Treaty provisions. Failure of Indian authorities to get more detailed verification or underlying cost data from the Malaysian Government authorities cannot be held against the appellant, who discharged the burden to claim benefit by providing the relevant prescribed document under the agreement and the Customs notification. On production of such evidence, it was for the department to discharge the onus as shifted upon it.”*

2.3 Reliance in this regard was also placed on the decision of **RS Industries (Rolling Mills) Ltd v. Commissioner of Central Excise Jaipur-I, 2017 (11) TMI 1256**, wherein it was held that in the presence of valid certificates of origin issued by the Competent Authority, the assessing authorities in India are not right in denying the benefit of exemption notification.

2.4 It was submitted that a valid Country of Origin Certificate is sufficient to prove the origin criteria of goods. The fact of the matter is

that the COO has not been cancelled by the issuing authority in the country of export. In such situation, the Department cannot disregard the valid COO issued by the authority. Reliance in this regard is placed on the following decisions-

- ***Romil Jewelry v. Commissioner of Customs, Air Cargo, Mumbai- 2023 (9) TMI 462***
- ***Minakshi Exports v. Commissioner of Customs, Jodhpur- 2018 (359) E.L.T. 689 (Tri. -Del.)***
- ***Commissioner of Customs, Hyderabad v. Riddhi Siddhi Bullions Ltd.- 2017 (355) E.L.T. 585 (Tri. -Hyd.)***
- ***Zuari Industries Ltd. v. CCE. & Cus. - 2007 (210) E.L.T. 648 (S.C.)***
- ***Yellamma Dasappa v. Commissioner of Customs, Bangalore- 2000 (120) E.L.T. 67***

The documents relied upon by the Department are not reliable evidence to prove origin of goods.

- i. Tags/stickers cannot be relied upon to say that the origin criteria are not satisfied.

2.5 The entire case of the department is based on the fact that three stickers were allegedly found in (3) 'three bags' out of 1650 bags which state "California" on them and therefore, it is alleged that the entire containers i.e. all 1650 bags 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. These alleged stickers are also of different names.

2.6 It was submitted that when all the conditions specified under SAFTA Rules are satisfied by the Appellant and the benefit of preferential tariff treatment is available on the import of goods from SAFTA countries is proved, in that case the exemption benefit can not

be denied merely on the allegation that random tags/stickers were found in the imported goods.

2.7 Reliance in this regard was placed on the decision of the ***Commissioner of Customs, Hyderabad v. Riddi Siddhi Bullions Ltd, 2017 (355) ELT 585 (Tri-Hyd)***, wherein it was held that when all documents as required under exemption notification, provided and accepted as genuine documents certified and issued by Government authorities, the officer cannot deny the benefit of the exemption notification.

ii. Phyto Sanitary Certificate is not relevant in the present case.

2.8 Further, in the entire show cause notice, the allegation levelled against the Appellant is that of forging the phyto certificate. However, the phyto certificate is not a determining factor for deciding the origin of the goods.

2.9 Phyto certificate is a document given by an independent agency that declares that the goods are safe for consumption, and an invalid phyto certificate does not invite payment of duty or interest, or fine as alleged in the show cause notice. 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.

2.10 It was submitted that the certificate of origin has been verified, the goods declaration documents have been verified, and therefore, there remains no question of phyto certificate. The entire case of the DRI has been proven to be false and there is no evidence against the Appellants of mis-declaring the goods imported.

The Customs Authorities ought to have dropped the proceeding once the fact of issuance of COO is verified by Afghanistan during verification of the origin of the goods in accordance with SAFTA rules. Therefore, the question of denying the benefit of exemption notification does not arise.

2.11 It was submitted that Article 15 of the SAFTA Rules provides for a step-by-step verification process which should be undertaken in case there is any doubt about the authenticity of the COO. However, the benefit of preferential tariff treatment has been denied without following the procedures laid down in Article 15.

2.12 Article 21 provides for dispute settlement procedure which is to be invoked by the Governmental Authority in case of dispute concerning origin determination. However, no such procedure has been followed. Reliance in this regard was placed on the decision of ***Kothari Metals Limited v. Union Of India & Ors reported in 2019 (12) TMI 74 – (SC)***, wherein it was held that where validity of the COO is in dispute between governmental authority of importing and exporting parties., authorities were required to enter into consultation with a view to resolving the dispute as per the Origin Rules.

2.13 It was submitted that in cases where the Department has not performed any independent verification of the COO, the benefit cannot be denied merely based on the communications received by the DRI. Reliance in this regard is placed on the following case laws:

- ***Shirazee Traders Vs. CC, Mundra, 2024 (1) TMI 781– CESTAT Ahmedabad***
- ***Symphony International Vs. CC, Mundra, 2024 (1) TMI 988- CESTAT Ahmedabad***
- ***DP Chocolates Vs. CC, Mundra, 2024 (8) TMI 266 - CESTAT Ahmedabad***

- ***M/s. Malas Fruit Products Vs. CC, Mundra, 2024 (5) TMI 282- CESTAT Ahmedabad***
- ***Kanpur Edibles Private Ltd. Vs. CC (Preventive), Kolkata, 2024 (5) TMI 576- CESTAT Ahmedabad.***

2.14 Further, customs duty demand in respect of BOE no. 3997006 dated 09.07.2019 is not sustainable as Appellants have already relinquished their title of goods.

2.15 Section 28DA of the Finance Act, 2020, dated 27.03.2020, (effective from July 2020) imposes an obligation on the importer to possess sufficient information on Regional Value Content (RVC) and Product-specific criteria specified in the rules of origin under the FTAs. In the present case, majority of the imports were made before June 2020 when there was no obligation on the importer to verify any additional details, apart from submitting the COO. Reliance is placed on the decision of ***Bullion and Jewellers Association v. UOI- 2016 (335) E.L.T. 639 (Del.)***, wherein it was held that if imports are made prior to the introduction of Section 28DA, in that case a valid COO at the time of import is sufficient and such import cannot be called into question at a later stage.

2.16 There was no mis-declaration or suppression in the present case, and thus, Section 111(m) is not applicable. Further, Section 111(o) relates to violation of post-import conditions of an exemption notification. Here, the case of the department is denial of exemption due to non-satisfaction of threshold condition. Hence, Section 111(o) is not invocable. It was submitted that the interest and penalty are not imposable under Section 28AA, Section 114A and Section 114AA of the Customs Act, 1962, respectively, as the demand of duty is not sustainable.

2.17 In view of the above submissions, it was prayed that the present Appeal be allowed with consequential reliefs.

3. The department on the other hand submitted as follows:

3.1 The appellant, a proprietorship firm owned by Shri Suresh Bhatt, is engaged in trading of both domestically procured as well as imported Dry Fruits and Spices. The DRI got intelligence that appellant was engaged in fraudulent import of Walnuts (in-Shell) of United States of America (USA) origin by mis-declaring the Country of Origin as Afghanistan in order to wrongly avail exemption of Customs Duty under Notification No. 99/2011-Cus dated 09.11.2011. The total effective duty on Walnuts (in-shell) when imported from USA at the relevant time was 143.6% while duty on imports taking benefit of exemption of Not. No. 99/2011-Cus was only 5% IGST on the assessable value.

3.2 Based on the intelligence, goods imported by the appellant vide Bill of Entry No. 3997006 dated 09.07.2019 at Mundra Port in two containers were examined under Panchnama dated 10.07.2019 and 08.08.2019. During examination, various incriminating evidences in the forms of Paper Slips / Paper Tags Stitched /attached on Bags or inside the bags containing walnuts (in-shell) were found clearly indicating that the goods were of USA origin. The subject goods were detained under panchnama on reasonable belief that the same were liable for confiscation under the Customs Act, 1962. During search at the office premises of the appellant, the proprietor Shri Suresh Bhatt informed that the goods were of USA origin, which were imported in Karachi and the documents were arranged showing the Country of Origin as

Afghanistan and the subject goods were then dispatched to India after changing the original packing. He also informed that they had imported a similar consignment previously vide Bill of Entry No. 3385021 dated 25.05.2019 from the same supplier. The subject goods imported vide Bill of Entry No. 3997006 dated 09.07.2019 were later placed under seizure vide Seizure Memo dated 26.07.2019. The officers of DRI withdrew 2 mobile phones used by Shri Suresh Bhatt on reasonable belief that the said mobile phones could contain important data relevant to the inquiry.

3.3 Statements of Shri Aakash Nair, Senior Executive of M/s. Winwin Maritime Ltd (Authorised Agent for Shipping Line M/s. Allied Container Line, Karachi) was recorded on 21.10.2019 under Section 108 of the Customs Act, 1962. M/s. Winwin undertook clearances of their containers at Mundra / Kandla ports. After seeing Bills of Lading Nos. ACL/KHI/MUN-1447/19 dated 23.05.2019 and ACL/KHI/MUN-1965/19 dated 27.06.2019 from the documents produced by him and the Phytosanitary Certificates No. 160042 & 1600423 both dated 14.05.2019 and 202493 & 202494 both dated 09.05.2019 and certificate No. 202981 dated 13.05.2019 issued by Plant Protection and Quarantine Department, Ministry of Agriculture, Irrigation and Livestock, Islamic Republic of Afghanistan, he stated that it appeared that the Containers were loaded from Karachi Port. Further, perusal of Phytosanitary Certificates revealed that fumigation was done at Kandahar, Afghanistan but the Container Numbers were not mentioned in the Phytosanitary Certificates. That after receiving letter from DRI to submit the documents, he had contacted the persons of M/s. Allied Container Lines at Karachi which forwarded the documents submitted by the shipper's agents at Karachi Port and also informed that they 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. Though M/s. Allied Container Lines, Karachi had informed that the goods were in transit from Karachi and initially loaded at Afghanistan, however, no relevant supporting documents substantiating the fact were produced.

3.4 Statements of Shri Mohmad Tariq Chaudhary, Partner of M/s. Kandla Logistics was recorded under Section 108 of the Customs Act, 1962 on 21.01.2020 wherein he was shown email communication on Page 83 to 86 of File No. 1 submitted by him. He stated that the email was forwarded by (M/s. Kesar Spices) to him on 23.05.2019 at 19.15 hrs which was a forwarded email from M/s Asmat and brothers and had a pdf attachment containing Phytosanitary Certificates No. 160031 dated 12.05.2019, 202493 dated 07.05.2019 and 202494 dated 07.05.2019 issued by the Islamic Republic of Afghanistan, Ministry of Agriculture, Irrigation and Livestock, Plant Protection and Quarantine Department (Quarantine Department for the sake of brevity). He was then shown email communication dated 23.05.2019 at 21.46 hrs received from the same email id of M/s. Kesar Spices containing BL, invoices, Phyto Certificates, SAFTA Certificates, Transit Certificate for 3 containers which he confirmed were final documents on the basis of which check list was prepared and Bill of Entry was filed. He again confirmed the Phyto Certificates to be 160031 dated 12.05.2019, 202493 dated 07.05.2019 and 202494 dated 07.05.2019 as per the email received.

3.5 He was then shown Page No. 5 to 7 of File No. 1 submitted by him wherein Phytosanitary Certificates were 202981 dated 13.05.2019,

202493 dated 09.05.2019 and 202494 dated 09.05.2019 issued by the Quarantine Department, Afghanistan. To a question as to how Phytosanitary Certificate No 160031 dated 12.05.2019 (received by emails dated 23.05.2019 at 19.15 hrs and 21.46 hrs) was replaced with Phytosanitary Certificate No. 202981 dated 13.05.2019 at the time of filing Bill of Entry no. 3385021 dated 25.05.2019, he stated that he was unable to recall as to how this happened. However, he stated that those were the documents which were finally forwarded through courier for filing Bill of Entry and the documents received earlier had not been cross-checked.

3.6 Statements of Shri Ravi Patel, Proprietor of M/s. Uma Trading Company, a wholesale trader of Cashew Nuts, Cumin Seeds, Black Pepper and Walnuts (in shell) etc. was recorded under Section 108 of the Customs Act, 1962 wherein he stated that he came into contact with Shri Suresh Bhatt of M/s. Kesar Spices in June 2019 through some common traders in the market. That Mr. Bhatt had offered to sell some quantity of old California Inshell Walnuts' at a lower rate who also provided some samples. He had purchased around 10000 kgs of Walnuts from Shri Suresh Bhatt on invoices issued by M/s. Kesar Spices in June 2019 and payments were made by RTGS. Thereafter, Shri Suresh Bhatt had informed that one of his known traders M/s V H Traders, Deesa was willing to sell 'California Inshell Walnuts. He had interacted with Shri Vishal of V H Traders and purchased about 5 MTs of California Inshell Walnuts'.

3.7 The two mobile phones seized at the office premises of M/s. Kesar Spices were examined by the Cyber Forensic Laboratory, DRI, Mumbai Zonal Unit, Mumbai under Panchnama dated 12.09.2019 and

data/details were retrieved from the two mobile phones. Scrutiny of the data and Call Details Records (CDR), shows that Shri Suresh Bhatt was not in contact with any mobile number / landline number of Afghanistan but was in contact with some numbers pertaining to Pakistan. Though contact number of the so claimed exporter M/s. Kalimullah Hidayat Afghan Ltd, Kandahar was an Afghanistan number but no Afghanistan numbers were contacted which shows that Shri Suresh Bhatt was in contact with certain Pakistan based persons and not in contact with any person belonging to Afghanistan.

3.8 On the request of DRI, the Assistant Director (E), Plant Quarantine Station, Mundra 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 five Phytosanitary Certificates. The Afghanistan Quarantine authorities informed that five Phytosanitary Certificates pertaining to imports vide both the Bills of Entry were completely fake. On comparison, it was seen that there was difference in the details provided in column 10 to 16 as these columns show "Nil" entry in the actual certificates. Further, the actual Certificate No. 202981 dated 01.05.2019 had the consignee name as M/s. Maadhav Trading Company, Delhi. There was also difference in the pattern of affixation of office seals in both types of certificates. Also, the importer has not made any payments with regard to both the Bills of Entry. It thus revealed that the treatment with 'Methyl Bromide' shown in the Phytosanitary Certificates produced before the Indian Customs was fake as the actual Certificates showed all treatment as Nil.

3.9 DRI, Zonal Unit, Ahmedabad vide letters dated 04.09.2019, 22.04.2020, 27.01.2021 requested the Director (International Customs), CBIC, New Delhi to cause necessary verification of the Country of Origin (COO) Certificates as there was significant mis-match in the signature appearing in the certificates submitted by the importer and the specimen signatures received from the Board.

3.10 In view of the above, it appeared that the importer in active connivance with Pakistan based trader, so called Shri Ashmat, imported walnuts of USA origin based on manipulated documents to evade Customs Duty by way of arranging fabricated Phytosanitary Certificates and COO Certificates for US origin goods by showing them as originating in Afghanistan to wrongly claim the benefit of Notification No. 99/2011-Cus dated 09.11.2011.

3.11 The Adjudicating Authority found that on the basis of specific inputs regarding wrong claim of Not No. 99/2011-Cus dated 09.11.2011, examination of goods (Walnut in shell) covered under Bill of Entry 3997006 dated 09.07.2019 was conducted under panchnama wherein some incriminating documents in the form of paper slips/paper tags stitched/attached to bags or found inside the bags of walnuts clearly indicating that the goods are of USA origin. The importer, vide letter dated 27.07.2019 voluntarily submitted a Demand Draft for Rs. 87,05,435/- towards payment of duty, 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.

3.12 With regard to importer's allegations that the stickers found in the cargo were planted by DRI, the adjudicating authority observed that

the said stickers were found during cargo examination in the presence of independent Panchas and authorized representative of the Customs Broker which have not been retracted during investigation. With regard to allegation that panchnama at the office premises was initiated on 10.07.2019 at 11.30 hrs whereas panchnama at the port started at 12.30 hrs, the Adjudicating Authority observed that there is no bar in searching the premises based on intelligence. There is no substance in both the allegation as CHA's representative was present during cargo examination whereas importer himself was present during search of the office premises and had signed the panchnama in token of truth and correctness of its contents.

3.13 The Adjudicating Authority found that in view of the evidences ie labelled stickers found on the bags/in the goods during examination, acceptance of dealing with Pakistani trader and hatching of conspiracy of arranging forged COO in search panchnama dated 10.07.2019, acceptance by the local traders that they have purchased 'California Inshell Walnuts' from Shri Suresh Bhatt in June 2019, call records indicating that the importer was never in touch with the Afghanistan based exporter, fake/forged Phytosanitary Certificates in case of, both the Bills of Entry, acceptance letter of noticee regarding mis-declaration of Country of Origin and statement of Shri Aakash Nair, Senior, Executive of M/s Winwin, Maritime Ltd that containers mentioned in the B/Ls were provided at Karachi and the cargo was stuffed at Badaruddin Yard, it remains an undisputed fact that origin of the goods was mis-declared as Afghanistan instead of USA in both the Bills of Entry. The pre-ponderance of probability which emanates from the said facts clearly points that the imported goods were of USA origin. He therefore ordered confiscation of the seized goods, imposed redemption fine,

ordered for recovery of duty and also imposed penalty on the importer for both the impugned bills of entry.

3.14 Learned AR also relied on the following decisions:

- 2022(1) Centax 97 (Mad – Conybio Health Care (I) Pvt. Ltd.
- 2000(115)ELT 278 (SC)-Western Component Ltd. vs CC New Delhi
- 2014 (309) ELT 641 - C.C. Bangalore vs Shipla Trading Co.

4. As per liberty granted to both sides, the Counsel for the appellant in rejoinder filed synopsis dated 8th April, 2025, further urging as follows:-

4.1 During the course of hearing, Ld. Department representative raised issue pertaining to non compliance of Article 18 of operational certification procedures for south Asian free trade area (SAFTA) rules of origin because evidence of transport of goods from Afghanistan to India are not on record. In this regard, there is no dispute that goods are transported from Afghanistan to India through Pakistan. Appellants has submitted documents showing transport of goods from Afghanistan to India. Further, following documents are submitted as evidence in addition to bill of landing submitted by the appellant:

- a. Bill of export filed at customs house, Chaman, Afghanistan which was assessed by customs officer, at customs house, Chaman, Afghanistan. Said bill of export show truck number, container number also through which goods were transported.
- b. Corresponding examination report issued by the customs officer of Pakistan and also customs officer of Afghanistan for the said goods during transit through Pakistan.

4.2 In view of above, it was submitted that there is no doubt that goods are transported from Afghanistan to India through Pakistan.

4.3 Without prejudice to above, he submitted that rule 18 of operational certification procedures for south Asian free trade area (SAFTA) rules of origin will not be applicable in the present case because this rule is applicable only in a situation where transport is effected through non-contracting parties of SAFTA. In the present case, goods are transported from Afghanistan to India through Pakistan which is a party to SAFTA as evident from rule 1 of rules of determination of origin of goods under the agreement on south Asian free trade area (SAFTA). Thus, in view of the fact that Pakistan is contracting state in SAFTA, rule 18 would not be applicable in the present case.

4.4 Without prejudice to above, it is submitted that in case of any dispute with regards to any aspect of origin of goods or any other aspect, article 21 of operational certification procedures for south Asian free trade area (SAFTA) rules of origin provides that contracting states shall consult each other to resolve the dispute. Further, rule 16 rules of determination of origin of goods under the agreement on south Asian free trade area (SAFTA) provides for consultation and co-operation in case of breach of any rules. Thus, in absence of following rule 16 of SAFTA Rules, department cannot reject COO issued by Afghanistan chamber of commerce.

4.5 And once COO is valid, substantial condition is satisfied in the present case. Substantial benefit cannot be denied because of violation of any procedural condition.

4.6 It was submitted that the said aspect is not raised in show cause notice. Thus, department cannot make a new case at the stage of hearing before Hon'ble CESTAT. In other words, department cannot travel beyond show cause notice.

5. We have gone through the material placed before us on record and rival submissions. The short issue in this case is the authenticity of certificate of origin. The importer while importing walnuts (in-shell) declared the same to be of Afghanistan origin on the basis of certificate produced by them whereas the department doubted authenticity of the same on the basis of recovery of 3 chits/slips (out of total 1650 bags) which indicated "origin as USA, inspected in certified or shipment "California" walnuts goods and product of USA. The Department on the basis of such writing and having reasons to believe started investigation and took up the matter with Afghanistan authorities who certified correctness of the certificate of origin. During investigation, a letter of Shri Suresh Bhatt, Proprietor was also relied upon which indicated that the goods were of USA origin which were imported in Karachi from USA but were being shown as having country of origin as Afghanistan. The same was denied at various fora. Again the statement of Aakash Nair, of M/s. Winwin Maritime Ltd was recorded. He was shown Phytosanitary Certificates covering the consignment issued by Plant Protection and Quarantine Department, Ministry of Agriculture, Irrigation and Livestock, Islamic Republic of Afghanistan from which, it appears that the container were loaded in Karachi port. The Phytosanitary Certificates did not mention the container numbers. He also indicated that the container was stuffed from the Badaruddin Yard and loaded from Karachi port. M/s. Allied Container, Karachi however informed that the goods in transit were from Karachi and initially loaded at Afghanistan. Statement of one Ravi Patel, Proprietor of M/s. Uma Trading Company, a wholesale trader, inter alia, of Cashew Nuts was also recorded that Shri. Suresh Bhatt of M/s. Kesar Spices in June 2019 had offered him some quantity for sale of 'California Inshell Walnuts' at lower rate and samples were also provided by Shri. Suresh Bhatt. The

D.R.I recovered two mobile phones and seized them under Panchnama dated 12.09.2019 from the premises of M/s. Kesar Spices which on examination by the Cyber Forensic Laboratory, DRI, Mumbai indicated that Shri. Suresh Bhatt was not in contact with any mobile number/landline number of Afghanistan but was in contact with some numbers pertaining to Pakistan. On request of DRI, the Assistant Director (E), Plant Quarantine Station, Mundra got in touch with the Head of quarantine and Plant Protection Department official, the contact point of Afghanistan wherein it was informed by the authorities at Afghanistan that the treatment with 'Methyl Bromide' was incorrect as the actual Certificates showed all treatment as Nil. The actual Certificate No. 202981 dated 01.05.2019 was issued in the name of Maadhav Trading Company, New Delhi, and therefore, it could not have been issued to the appellant. As DRI, Zonal Unit, doubted the Signature on the certificates of country of origin, it asked Director (International Customs), CBEC, New Delhi to cause necessary verification of the Country of origin but the COO was apparently confirmed by Afghan authority. As against this, the appellant submitted and relied on the statements of Shri. Aakash Nair, Senior Executive of M/s. Winwin Maritime Ltd to indicate that Phytosanitary Certificates were of Kandahar in Afghanistan though the container numbers were not mentioned.

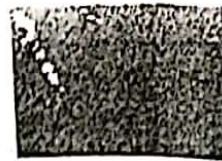
6. We have examined the available evidence in details including the documents on records as well as case law cited in relation to various propositions put forth during hearing. We find that the case of the department is primarily based on a letter of confession dated 23.07.2019 issued by the appellant's firm. Department also opines that Phytosanitary certificate produced by the appellant was found to be incorrect and interpolated in material particulars. Learned Commissioner

while passing order has proceeded on the incorrect premises that the show cause notice is a document which discharges initial burden and shifts, the same on the party. We are not in agreement with this proposition, as show cause notice is nothing more than a statement of all allegations which puts to notice, the party about the evidence which the department has in its possession. It is cardinal principle of evidentiary jurisprudence that, the 'one who alleges needs to prove'. By simply alleging in the show cause notice there is no shifting of the burden to the other side. *Ei incumbit probatio qui dicit, non qui negat* (Latin) is the guiding principle to emphasize that the burden of proof lies on the one who asserts, and not on the one who denies. This principle is foundation of both civil and common law system. We find that the importer had claimed concessional rate on the importer goods under SAFTA Agreement and related notification issued under Customs Tariff Act; As per notification, document required for claiming concessional rate of duty was the certificate of origin which was duly produced and in normal course, should have made the importer entitled to concessional rate of duty. We find that slips indicating 'California origin' were found only in three bags out of 1650 bags of Walnuts, which cannot be the basis to say that the whole consignment is of 'California Origin' by any sense of imagination, even if, the yardstick of pre-ponderance of probabilities is applied. We also find that there is no admissible statement as such recorded under Section 108 of the Customs Act, 1962 by the department but there only exists a letter dated 24th July, 2019 which has been relied upon by the department and which is reproduced below:



KESAR SPICES

All kind of spices Export and Import



(77)

Mo. 9966555539, 9966551928, 8980123458, 9227727799

Date: - July 24, 2019

To,
The Deputy Director,
Directorate of Revenue Intelligence,
Ahmedabad.

Subject - Submission of DD No. 009482 Dtd. 24/07/2019 amounting to Rs. 87,05,435/- Issued by Axis Bank Ltd., Chandkheda Branch, Ahmedabad in favour of "Commissioner of Customs, Mundra A/c IEC- 0813008875" for differential Duty payment, interest & Penalty.

Respected Sir,

In reference to visit of DRI officers of Ahmedabad at our office premises and Panchnama dated 10/07/2019 drawn at our office Premises M/s. Kesar Spices, 116, Madhukant Complex-2, First Floor, Opposite Hindi High School, Bardolpura, Near Madhupura, Ahmedabad - 380004. Also refer Panchnama dated 10/07/2019 under which goods imported at Mundra Port were examined. We have imported 02 consignments of 'Walnuts, Inshell' classifiable under HSN 08023100 by showing Country of Origin as Afghanistan instead of actual country of Origin United State of America (USA) vide Bills of Entry No. 3997006 dated 09/07/2019 & B/E No. 3385021 dated 25/05/201. In this regard, we accept our mistake and herewith submit DD No. 009482 Dtd. 24/07/2019 amounting to Rs. 87,05,435/- Issued by Axis Bank Ltd., Chandkheda Branch, Ahmedabad in favour of "Commissioner of Customs, Mundra A/c IEC - 0813008875" for payment of differential Duty payment, interest & Penalty voluntarily in respect of Bill of Entry No. 3997006 dated 09/07/2019 & B/E No. 3385021 dated 25/05/2019, in token of co-operation in the investigation. Kindly issue a T.R-6 challan for payment of duty. *Surekha Bhatt-24/7/19*

In this regard we again assure your good self that we are ready to pay the differential duty on account of mis-declaration of Country of Origin of the Imported 'Walnuts Inshell' and we are in process to pay the remaining dues.

We also request you to kindly release our goods as same are of perishable nature and it may possible that insects/rodents may destroy our goods and due to that value may also decrease. As we have paid the differential duty, interest and penalty in respect of goods seized at Mundra CFS, Mundra port, Mundra vide Panchnama dated 10/07/2019 and looking into the perishable nature of goods, it is once again requested to issue an order to release our goods at earliest.

Thanking You Sir.

For, KESAR SPICES

Surekha Bhatt.
Proprietor
24/7/19

116, Madhukant-II, Opp. Municipal Hospital, Bardolpura Ahmedabad - 380 004. Ph. 079-65445588
E-mail : kesarspice@gmail.com, dsrsgroup@gmail.com

Such letter cannot be, in any case a substitute for statement under Section 108 of the Customs Act, 1962

6.1 We find that the contents of above letter were vehemently denied by the party later on by approaching the Hon'ble High Court of Gujarat by filing a writ. They also wrote to the Commissioner of Police on 28th August, 2019 and to Joint Director, DRI on 7th October, 2019 alleging use of force and demanding refund of forcible deposit of differential duty. They also demanded refund on 3rd October, 2019 from the office of the Principal Commissioner of Customs in the matter of involuntary deposit. Again in special criminal application filed before the Hon'ble High Court of Gujarat at Ahmedabad, contents of the letter were retracted alleging harassment and denial of any wrong doing though the same was later withdrawn. We also find that while one consignment was cleared even prior to initiation of investigation in this matter, in which there cannot be any allegation of having found any kind of slips, even present consignment which was detained and has not been released till date, was stated to be not delivered to the party. Looking at the chronology of the events and sequel developments, including the factum of the statement not having been recorded Section 108, and the letter only which was denied vehemently at the level of executive as well as at the judicial forum, same lacks credence as even the party after the letter, sought refund of the voluntary deposit. We also find that at page 393 of the paper book is a relied upon document which is reproduced below:



**DIRECTORATE OF REVENUE INTELLIGENCE
AHMEDABAD ZONAL UNIT**

Unit No. 15, Magnet Corporate Park, Near Sola Flyover,
S. G. Highway, Thaltej, Ahmedabad - 380054

(Tel No: 079-26884002/26884000; Fax-079-29705078/29705080; e-mail- driazu@nic.in)

BY SPEED POST/FAX: 011-23093760

F. No: DRI/AZU/CI/ENQ-83(INT-26/2019)/2019

Date: 27/01/2021

REMINDER

To:
The Director (International Customs Division),
Central Board of Indirect Tax and Customs,
Department of Revenue,
Ministry of Finance, Government of India,
Room No.49, North Block,
New Delhi - 110001.

Sir,

**Sub.:- Verification of Country of Origin Certificates said to be issued
in Afghanistan under SAFTA for the export of Walnuts - reg.**

Kindly refer to this office letter of even number dated 22/04/2020 on the above subject matter(copy enclosed). Also, refer to letter F. No. 456/50/2019-CUS. V dated 08/01/2020 and 17/03/2020 received from OSD (Customs-V), CBIC, Department of Revenue, Ministry of Finance, whereby it has been informed that COOs were issued by Afghanistan Chamber of Commerce and Industries (ACCI) based upon documents of Customs and Agriculture Department of Kandhar.

2. In this regard, vide letter dated 22/04/2020 it was requested to obtain the copies of documents filed before the ACCI by the Afghanistan supplier at the time of applying for COO certificates, from the designated Afghanistan authority and the copies of documents filed before the Customs Authority of Islamic Republic of Afghanistan by the Afghanistan supplier.

3. An early reply in the matter is awaited to conclude the investigation in the matter.

Yours faithfully,

R. Prashant Kumar
(PRASHANT KUMAR)
Joint Director
DRI, AZU, Ahmedabad

Encl.:- As above.

6.2 From above, it is clear that on enquiry Revenue found that the certificate of origin was actually issued by the Afghanistan Chamber of Commerce and Industries based upon documents of Customs and Agricultural Department of Kandhar. However, the DRI officials wrote to Director ICD to obtain the copies of the documents filed by Afghan supplier before Afghanistan Chamber of Commerce and Industries (ACCI). Thus, it is clear that the COO filed by the appellant was duly endorsed by the issuing authority. Therefore, neither the certificate can be taken to be denied by the relevant Government authorities nor can the origin of the goods be taken to be of some other country. The DRI, it appears approached the Quarantine Authority in India, who in turn wrote to the Quarantine Authorities in Afghanistan and got a report in relation to Phytosanitary Certificate which indicated that the same were interpolated or tampered with in relation to columns specially relating to type of treatment given to the consignment. It is clear that origin from Afghanistan is not specifically denied by the authorities there and department's case that consignment moved from USA to Dubai and from there to Karachi port and then to India lacks credence as there is otherwise overwhelming documentary evidence available including examination reports before Karachi Customs and Afghanistan Customs, transit certificate and COO, which have not been denied or proved to be incorrect by the departmental authorities. Coming to the case law as has developed in relation to exemption benefit vis-à-vis the certificate of origin, various case laws quoted by the party come to their defense and supports their case that verified certificate of origin by the relevant authorities under SAFTA is conclusive evidence for claiming the benefit. We find the verified country of origin certificate is sufficient proof of the origin criteria and department cannot ignore this record, without the underlying authorities denying the same. The following case law is of

relevance in this regards, RS Industries (Rolling Mills) Ltd Vs. Commissioner of Central Excise, Jaipur-II reported in 2017 (11) TMI 1256.

6.3 We find that in the absence of Afghan Government Authorities or its Chamber of Commerce denying existence of such certificate of origin the requirement of Article 15 of the SAFTA Rules which provide for step to step verification process cannot be taken to be not fulfilled. Authenticity of COO needs to be denied as per the procedure of Article 15. The Hon'ble Apex Court in the matter of Kothari Metals Limited Vs. Union of India & Ors reported in 2019 (12) TMI 74-(SC) held that the validity of COO is matter of dispute between authority of importing and exporting country which is required to be resolved through consulting process as per original rules. We find that in the instant case, department has neither performed any further verification to establish incorrectness of COO, nor any consultation has taken place as per record. Therefore, benefit of the same cannot be denied to the party. We also find that this proposition is supported by following case law i.e.-

- **Shirazee Traders Vs. Commissioner of Customs, Mundra-2024 (1) TMI 781-CESTAT-Ahmedabad,**
- **Symphony International Vs. Commissioner of Customs, Mundra-2024 (1) TMI 988-CESTAT, Ahmedabad,**
- **DP Chocolates Vs. Commissioner of Customs, Mundra-2024 (8) TMI 266-CESTAT, Ahmedabad**
- **Kanpur Edibles Private Vs. Commissioner of Customs (Preventive), Kolkata-2024 (5) TMI 576-CESTAT,Ahmedabad.**

6.4 The Hon'ble High Court of Delhi has also held that prior to introduction of Section 28DA in the Customs Act holding of certificate of origin was sufficient to claim exemption benefit and such import cannot be called into question at a latter stage. This is as per the case law in Bullion and Jewellers Association Vs. Union of India-2016 (335) ELT 639 (Del.). We also find that three tags/stickers found in three walnut bags out of total 1650 bags, are also of different names and different in contents. It will be preposterous to hold whole consignment on the basis of these tag/stickers as of any other origin despite so much evidence having been produced which has not been proved to be incorrect by the department. Some claim of Pythosanitary Certificate having been manipulated/tampered cannot be taken as proof of goods not having originated from Afghanistan. Such evidence could have at the most allowed department to allege ITC violation but cannot be used to deny exemption notification benefit. We also find that the earlier consignment was duly cleared by the department and other is stated to be not cleared till date and might have become Junk and expired food item. In any case, the fumigation as per notification is permitted to be done in either the country of export or the country of import. Such allegation has been made without testing the veracity of the third agency and document collected by it without examining the official by the adjudicating authority or of the authority in the Afghanistan can have co-relation with origin of the country, being Afghanistan only. We find that the country of origin in the face of overwhelming documentary evidence confirmed by Ministry of Finance cannot be overlooked on the basis of mere presumption to be of 'California origin'.

7. In view of the foregoing factual details as well as various case law, we find no reason to sustain order passed on legality of the issue

as well as on the basis above stated facts and appreciation of evidence has done by us.

8. Appeal is therefore, liable to be accepted and is ordered accordingly. Appeal is allowed.

(Order Pronounced in the open court on 14.05.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)

Neha