CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. V

Customs Appeal No.85272 of 2025

[Arising out of Order-in-Original No. S/10-280/2022-23/CC/NS-I/CAC/JNCHdated 15.10.2024 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva]

Keltech Energies Ltd. .... Appellant
7th Floor, Embassy Icon No.3,
Infantry Road,
Bengaluru 560 001.

Versus

Commissioner of Customs, Nhava Sheva-I .... Respondent
Jawaharlal Nehru Custom House, Nhava Sheva,
Tal: Uran, Dist: Raigad 400 707

APPEARANCE:

Shri Ashwini Kumar with Shri Abhishek Goda and Shri Shubham Waphare, Advocates for the Appellant

Shri Deepak Sharma, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 85620/2026

Date of Hearing: 01.04.2026
Date of Decision: 30.04.2026

PER: RAJEEV TANDON

The appellant Keltech Energies Ltd. has filed an early hearing petition in the matter, pursuant to the Order-in-Original No. S/10-280/2022-23/CC/NS-I/CAC/JNCH dated 15.10.2024 passed by the Commissioner of Customs (NS-I), JNCH, Nhava Sheva. Having allowed the same, as the issue involved rests on a narrow compass, with the consent of the two sides, we take up the appeal for consideration.

2. Vide the impugned order, the adjudicating authority has rejected the declared "Country of Origin" of the imported goods "Ammonium Nitrate", declared as "Uzbekistan" in the seventeen Bills of Entry (as per Table II of para 6 of the show cause notice) and has directed that the country of origin

of the said goods should be treated as Iran and the imported goods reassessed in accordance with Notification No.44/2017-Customs (ADD) dated 12.09.2017. The learned Commissioner has thus confirmed the demand of duty for an amount of Rs.2,75,43,267/- and ordered its recovery from the appellant in terms of Section 28(4) of the Customs Act, 1962[1]. He has accordingly also sought interest in terms of Section 28AA of the Act. The imported goods were confiscated and further directed to be released on a redemption fine of Rs.1,00,00,000/-. Penalty of equivalent amount of Rs.2,75,43,267/- and Rs.10,00,00,000/- has also been imposed on the appellant in terms of Section 114A and Section 114AA of the Act.

3. The appellant has submitted that the imported goods of Uzbekistan origin, were loaded from the gateway port of Iran as Uzbekistan is a land-locked country and that at the time of import, they had duly submitted the Country of Origin Certificate to the authorities seeking exemption from payment of anti-dumping duty, in accordance with the provisions of the exemption notification referred above. It has also been stated by the learned counsel for the appellant that the authorities appropriated an amount of Rs.3,59,66,957/- paid by the appellant during the course of investigations against the confirmed amount of duty referred to supra. He has also pointed out that on the very issue, the Additional Commissioner of Customs, NS-I, JNCH has passed order-in-original No. 702/24-25/ADC/NA-I/Gr. 2(A-B)/JNCH dated 06.08.2024 dropping the demand against another noticee to whom the show cause notice was issued on the same grounds. He thus alleges discrimination and grave injustice being meted out to them, pointing out significant sums of capital being blocked, leading to unavoidable financial hardships.

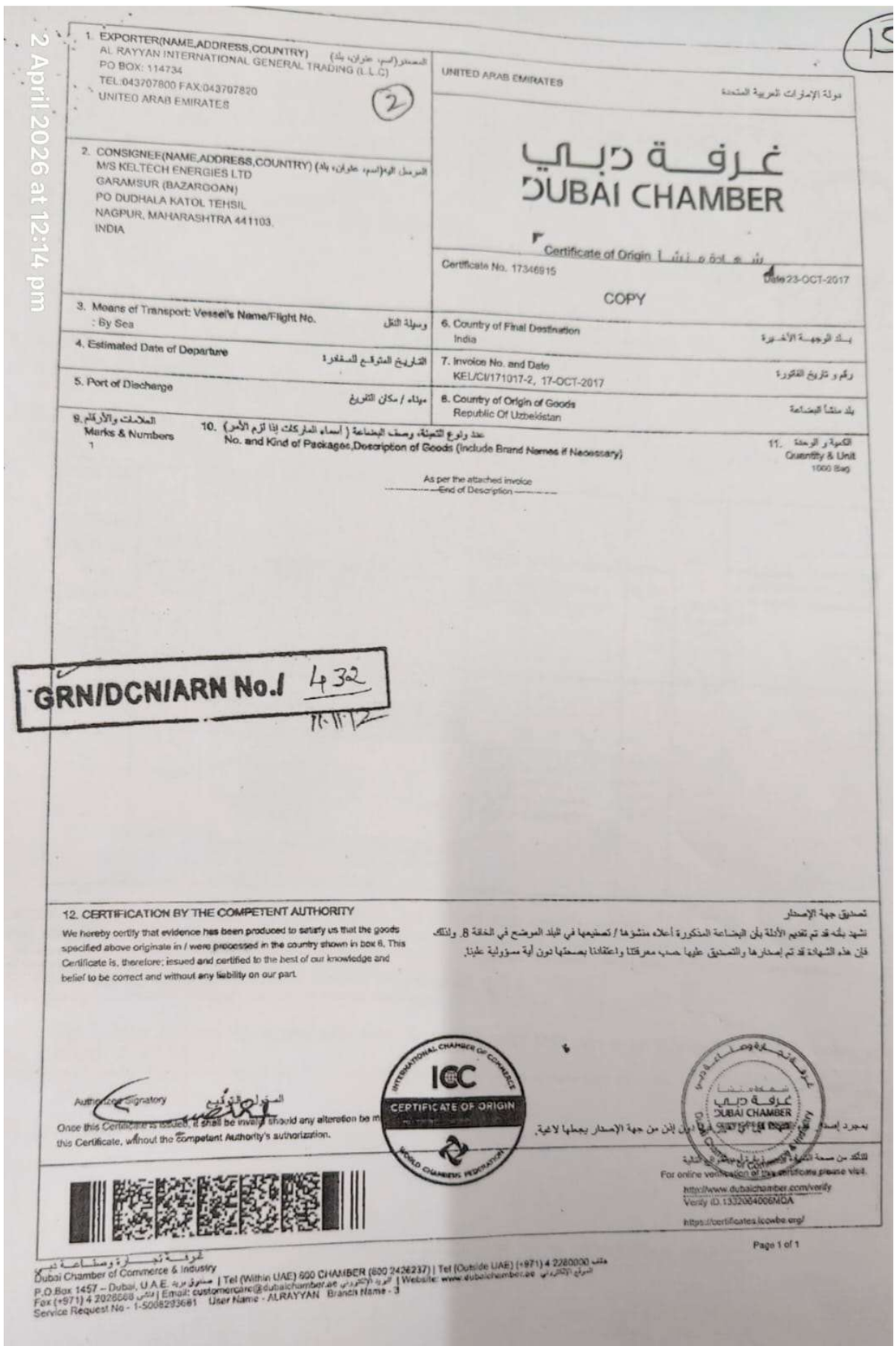
4. It has been emphatically stated that the action of the authorities has been arbitrary and not in accordance with the stipulation of law, that though they had submitted the Country of Origin Certificate, while claiming

[1] The Act

the exemption benefit from imposition of ADD, no investigations were carried out by the authorities in this regard as to the veracity and genuineness of the said certificate. The appellant states that there is not a single allegation to point out that this impugned certificate which formed the basis of exemption was forged, manipulated, falsified or suffered from such a defect, as would disentitle them to avail of the said duty concession/exemption.

5. We have also heard the learned AR, Shri Deepak Sharma, for Revenue, who reiterates the contents of the order-in-original and supports the impugned order. To substantiate his case he lays empphasis to the exchange of communication/e-mails between Dubai-based suppliers i.e. M/s. Al Rayan Trading International and M/s. Supreme Agrochem FZE to point out collusion and mis-declaration of Port of Loding and Country of Origin. He also invites our attention to the statements of certain persons and the electronic evidence in support referred to in the notice.:-

6. We have perused the case records and heard the two sides at length. The sole basis for Revenue to justify their cause of action is two fold viz. (i) certain statement as recorded by the authorities and (ii) the electronic evidence gathered during the course of investigations. We however do not find any semblance of action taken to support the evidentiary credentials of such electronic evidence as required and enumerated under Section 138C of the Act. It is a fact on record, as also evidenced by the Country of Origin Certificate concerned in the matter that the impugned goods were of Uzbekistan origin, as declared by the appellant. The said Country of Origin Certificate, is scanned and reproduced herein below:-



7. The appellant has submitted before the lower authorities and reiterated before us that the imported goods were loaded from Jebel Ali Port, Dubai, being the Port of loading, with origin of goods from Uzbekistan. The Revenue has not been able to refute that the goods were procured by the importers from MBP China Trading Limited (MBP China)

who had purchased the said goods from Maxam Chirchiq, a manufacturer based in Uzbekistan. The appellant also submitted that the manufacturer is one of the company under Uzkimyosanoat, a joint stock company. In support of their submission, they also enclosed the website details indicating Maxam Chirchiq a manufacturer of Uzkimyosanoat, Uzbekistan and have contended that the impugned product was transported by road from Uzbekistan to Port Bandar Abbas, Iran, as Uzbekistan is a land-locked country and Bandar Abbas is one of the nearest ports available for shipment, further asserting that the impugned goods were transported from Bandar Abbas to Jebel Ali, Dubai for the final destination of the imported goods into India.

8. From the said certificate, it is clear that the ammonium nitrate under import originated from Uzbekistan. The same was entitled to ADD exemption in terms of notification number 44/2017.Customs (ADD) dated 12.09.2017. The statements as formed the basis of the notice, bear no independent corroboration. The appellant has termed them to be obtained under coercion and duress. These statements recorded by the authorities ought to be duly supported by primary documentary evidence to make them credible and reliable pieces of evidence. This however is woefully lacking in the present instance. The Whats App chat as relied by Revenue have not been subjected to the rigors of Section 138C as warranted in law. The said exchange is not able to establish the identity of the persons between whom the said exchange has taken place. It is not able to establish whether at all such an exchange is between parties concerned with the matter. There is no authentication of the same. We do not find any credibility therein to link them with the imported goods, without a doubt. It fails to belie logic as to what prevented the authorities from conducting investigation into the Country of Origin Certificate submitted by the importer, issued by the Dubai Chamber. Surmising and presuming about the origin of the imported goods merely on the basis of recorded

statements/chats cannot hold sway in the matter for reasons as stated earlier.

9. We also note from records that the appellant had placed various purchase orders on the exporter, Al Rayyan International General Trading LLC (exporter 2) for procurement of ammonium nitrate in bulk of density comprising between 0.60 to 0.85 CC. In all, there were five such purchase orders with their supporting Country of Origin Certificate indicating the quantity exported. Statement of one Ayub Khan recorded by the authorities that the product imported by the appellant as leviable to levy of anti-dumping duty, the country of origin misdeclared and switched as Uzbekistan (and not Iran) to evade payment of the same, is without a shred of independent corroboration. In the course of their investigations, the authorities also recorded the statement of Maxam India Pvt. Ltd. (an Indian branch of the manufacturer i.e. Maxam Chirchiq, Uzbekistan). These statements are alleged to be obtained under duress and coercion. A bland statement can certainly not establish any mis-declaration.

10. In support of their defence, the appellant has also submitted invoices raised by the Defence Industries Organization (D/D), Islamic Republic of Iran, evidencing payment of money towards use and the storage facility of ammonium nitrate in the yard located at Bandar Abbas, Iran. The said goods were transported from Tashkent, being the port of loading and the port of destination being Jebel Ali, Dubai. A certificate issued by the Defence Industries Organization of Islamic Republic of Iran dated 8th May 2017, confirming the DIO, Iran had received the product from Uzbekistan has further been produced and is a part of records. We also find on record, purchase orders and invoice dated 17th December 2018 and 23rd December 2018 between Supreme Agrochem FZE (exporter 1) and MBP China reflecting the purchase of ammonium nitrate produced by the manufacturer, Maxam Chirchiq, Bill of Lading issued by Tarannom Shargh evidencing transport of ammonium nitrate, produced by the manufacturer,

from Tashkent to Bandar Abbas as its final destination Jebel Ali has also been submitted and placed on record by the appellant. All these documents were said to be tendered to the lower authorities as well. The certificate of origin on record issued by the Republic of Uzbekistan clearly shows the origin of the product as Uzbekistan. The name of the manufacturer Maxam Chirchiq (a sister concern of Uzkimyosanoat), a joint stock company of Uzbekistan and the name of the consignee, the appellant is also recorded thereon. In the maze of such wealth of documentary evidence on record, the alleged statements as recorded by the authorities can at best lead to a presumption that needs to be fortified by credible documentary evidence. This burden has not been discharged by the authorities. Also we find no effort by the Revenue to ascertain the chemical/physical analysis of the imported goods. There being no proof of the "bulk density" of the imported ammonium nitrate, the confirmation of the demand further cannot be sustained.

11. Despite the plethora of such documentary evidence available on record, we find that the authorities below have chosen to be guided by statements as recorded by them and other material collected by way of electronic evidence, rather than systematically demolishing the evidence as tendered by the appellant. The primary evidence tendered by the appellant, i.e. the Country of Origin Certificate, has not been subjected by the authorities to any scrutiny or verification from the authorities having issued the same. Also, the electronic evidence gathered in support of the Revenue's case is required to be subjected to the provisions and scrutiny as spelt under Section 138C of the Act. There is no response from Revenue on this count. The argument of the appellant we hold thus is of considerable merit.

12. The appellant has further argued that no cross-examination of the statement of Sri Ayub Khan, relied upon by the authorities has been offered. This lacunae in investigation certainly casts a serious blow to the

requirements in law for compliance of the principles of natural justice. We are surprised that if the challenge was to the Country of Origin as declared as per certificate on record, there is not a word by the authorities as to why the same was not subjected to verification/scrutiny. Instead of going about secondary and peripheral evidence that the authorities seem to have collected, during the course of their investigations, the primary evidence was necessarily required to be subjected to legal scrutiny. For reasons thus, the evidence in support of the Revenue's plea by the authorities cannot form the reason de-aitre for determination and levy of ADD in the matter.

13. The appellant has also alleged discrimination by pointing out and submitting before us an order in an identical matter on a similar set of facts having been passed against Revenue by the authorities concerned. Indeed there is sufficient merit in this plea of the appellant.

14. For reasons aforesaid, we set aside the order of the lower authority and allow the impugned appeal, with consequential relief, if any, as per law.

(Order pronounced in court on 30.04.2026)

(AJAY SHARMA)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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