



ऑफिस ऑफ द कमिशनर ऑफ कस्टम्स
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-V
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
ताल-उरण, डिस्ट-राइगड, महाराष्ट्र-४००७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

F. No.: S/10-98/2025-26/ADC/GrVI/NS-V/CAC/JNCH

Date of Order: 25.11.2025

Date of issue: 26.11.2025

Passed By: **Shri Satish Kumar**

Additional Commissioner of Customs, NS-V

DIN- 20251178NX0000222B2B

Order-In-Original No. 1209/2025-26/ADC/GR.VI/NS-V/CAC/JNCH

(Arising out of SCN No. 369/2025-26/ADC/Gr.VI/NS-V/CAC/JNCH dated 02.07.2025)

Noticee: M/s Nishar Enterprises (IEC-ACIPN5957D)

मूलआदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगड, महाराष्ट्र - 400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50 रुपये मात्र कास्टांप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50 रुपये का स्टांप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava Sheva, Tal: Uran, Dist.: Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

Brief Facts of Case

Whereas, M/s Nishar Enterprises (IEC-ACIPN5957D) was issued adjudication order, OIO no. 1388/2022-23/ADC/Gr.VI/NS-V/CAC/JNCH dated 15.02.2023, for re-export of the goods imported vide Bill of Entry 3095828 dated 30.10.2022, the syndicate members made a copy of a checklist of a fake Shipping Bill to remove the goods from the customs bonded warehouse in the

guise of re-export, whereas actually goods were not re-exported, rather the same were diverted to the local market. The syndicate members illegally removed the said goods on the fake checklist of the shipping bill without payment of the duty, redemption fine and penalty, imposed on the goods confiscated vide OIO no. 1388/2022-23/ADC/Gr.VI/NS-V/CAC/JNCH dated 15.02.2023.

The details of the confiscated goods, which were illegally removed from the Raghava Warehousing and Logistic Services Pvt. Ltd. (NSA1U 047) warehouse and diverted to the local market. The relevant details are as below:-

Table 1: Details of the adjudicated goods

Importer Name	M/s Nishar Enterprises (IEC-ACIPN5957D)
Bill of Entry No./date	3095828 dated 30.10.2022
Name of Warehouse	Raghava Warehousing and Logistic Services Pvt. Ltd. (NSA1U 047)
Goods description	Pop It Toy Small, Pop It Toy Big and Dancing Cactus Toy
Adjudication order for re-export	Yes
Adjudication / O-I-O Number and Date	1388/2022-23/ADC/Gr.VI/NS-V/CAC/JNCH dated 15.02.2023
Adjudicating Authority	Additional Commissioner of Customs, Group-6, NS-V, JNCH
Fake Checklist of the Shipping Bill No./date	6931546/ 12.06.2023

Details of the goods illegally removed from the warehouse is as below:

Table-2

Sr. No.	Shipping Bill No.	BE No	Goods Description	Re-determined Assessable Value of the goods	Duty as per the adjudication order
1	6931546/ 12.06.2023	3095828 dated 30.10.2022	Pop It Toy Small, Pop It Toy Big and Dancing Cactus Toy	Rs. 4,21,365/-	Rs. 3,62,037/-

2. Relevant Legal Provisions that relate to the facts of the case are brought out below:
PERTINENT PROVISIONS OF LAW APPLICABLE TO THE PRESENT MATTER ARE ILLUSTRATED HEREUNDER:

9.1 Section 7 & 11 of the Foreign Trade (Development and Regulation) Act, 1992 reads as follows:-

7. Importer-exporter Code Number - No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General or the

officer authorized by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General.

11. Contraventions of provisions of this Act, Rules, Orders, and export and import policy (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

Rule 12 and 14 of FOREIGN TRADE (REGULATION) RULES, 1993 reads as follows;

12. Declaration as to Importer-exporter Code Number - On the importation into or exportation out of any Customs port of any goods the importer or exporter shall in the Bill of Entry or Shipping Bill or, as the case may be, in any other documents prescribed by rules made under the Act or the Customs Act, 1962 (52 of 1962), state the Importer-exporter Code Number allotted, to him by the competent authority.

14. Prohibition regarding making, signing of any declaration, statement or documents.-

(1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

(2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

18.2 The Customs Act, 1962

i. **Section 2(26)** "Importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer.

ii. **Section 2(39)** '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;

iii. **Section 11A of the Customs Act, 1962 Definitions.** - In this Chapter, unless the context otherwise requires- "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;

iv. **Section 12. Dutiable goods.**—(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the 1 [Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India. 2 [(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]

v. **14. Valuation of goods**—(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and 1. Subs. by Act 51 of 1975, s. 13, for —Indian Tariff Act, 1934 (32 of 1934) (w.e.f. 2-8-1976). 2. Subs. by Act 30 of 1963, s. 2, for sub-section (2) (w.e.f. 1-10-1963). 3. Subs. by Act 22 of 2007, s. 95, for section 14 (w.e.f. 10-10-2007). 22 brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf: Provided further that the rules made in this behalf may provide for,—

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section: Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Explanation.—For the purposes of this section—

(a) —rate of exchange|| means the rate of exchange—

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b) —foreign currency|| and —Indian currency|| have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

vi. Section 28(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 wilful 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 4 [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.

1[28AA. Interest on delayed payment of duty—(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance

with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

vii. Section 45. Restrictions on custody and removal of imported goods —

(1) Save as otherwise provided in any law for the time being in force, all imported goods unloaded in a customs area shall remain in the custody of such person as may be approved by the 2 [Principal Commissioner of Customs or Commissioner of Customs] until they are cleared for home consumption or are warehoused or are transshipped in accordance with the provisions of Chapter VIII.

(2) The person having custody of any imported goods in a customs area, whether under the provisions of sub-section (1) or under any law for the time being in force,— (a) shall keep a record of such goods and send a copy thereof to the proper officer; (b) shall not permit such goods to be removed from the customs area or otherwise dealt with, except under and in accordance with the permission in writing of the proper officer 1 [or in such manner as may be prescribed]. 2 [(3) Notwithstanding anything contained in any law for the time being in force, if any imported goods are pilfered after unloading thereof in a customs area while in the custody of a person referred to in sub-section (1), that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an 3 [arrival manifest or import manifest] or, as the case may be, an import report to the proper officer under section 30 for the arrival of the conveyance in which the said goods were carried.]

viii. Section 46 Entry of goods on importation—

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the Customs automated system] to the proper officer a Bill of Entry for home consumption or warehousing [in such form and manner as may be prescribed:

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(4) The importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [and such other documents relating to the imported goods as may be prescribed].

(4A) The importer who presents a Bill of Entry shall ensure the following, namely:—

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

ix. Section 47 Clearance of goods for home consumption. —

(1) Where the proper officer is satisfied that any goods entered for home consumption are not prohibited goods and the importer has paid the import duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance of the goods for home consumption :
Provided that the Central Government may, by notification in the Official Gazette, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.

(2) The importer shall pay the import duty -

- (a) on the date of presentation of the Bill of Entry in the case of self-assessment; or
 - (b) within one day (excluding holidays) from the date on which the Bill of Entry is returned to him by the proper officer for payment of duty in the case of assessment, reassessment or provisional assessment; or
 - (c) in the case of deferred payment under the proviso to sub-section (1), from such due date as may be specified by rules made in this behalf,
- and if he fails to pay the duty within the time so specified, he shall pay interest on the duty not paid or short-paid till the date of its payment, at such rate, not less than ten

per cent. but not exceeding thirty-six per cent. per annum, as may be fixed by the Central Government, by notification in the Official Gazette.

Provided that the Central Government may, by notification in the Official Gazette, specify the class or classes of importers who shall pay such duty electronically:

Provided further that] where the Bill of Entry is returned for payment of duty before the commencement of the Customs (Amendment) Act, 1991 and the importer has not paid such duty before such commencement, the date of return of such Bill of Entry to him shall be deemed to be the date of such commencement for the purpose of this section:

Provided also that] if the Board is satisfied that it is necessary in the public interest so to do, it may, by order for reasons to be recorded, waive the whole or part of any interest payable under this section.

x. Section 50- Entry of goods for exportation.— (1) The exporter of any goods shall make entry thereof by presenting 1[electronically] 2[on the customs automated system] to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export 3[in such form and manner as may be prescribed].

[Provided that the 4[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically 2[on the customs automated system] , allow an entry to be presented in any other manner.]

(2) The exporter of any goods, while presenting a shipping bill or bill of export, shall 5*** make and subscribe to a declaration as to the truth of its contents. 2[(3) The exporter who presents a shipping bill or bill of export under this section shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

x. Section 51. Clearance of goods for exportation.—6[(1)] Where the proper officer is satisfied that any goods entered for export are not prohibited goods and the exporter has paid the duty, if any, assessed thereon and any charges payable under this Act in respect of the same, the proper officer may make an order permitting clearance and loading of the goods for exportation: 7 [8[Provided that such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria: Provided further that] the Central Government may, by notification in the Official Gazette, permit certain class of exporters to make deferred payment of said duty or any charges in such manner as may be provided by rules.] 7[(2) Where the exporter fails to pay the export duty, either in full or in part, under the proviso to sub-section (1) by such due date as may be specified by rules, he shall pay interest on said duty not paid or short-paid till the date of its payment at such rate, not below five per cent and not exceeding thirty-six per cent per annum, as may be fixed by the Central Government, by notification in the Official Gazette.]

ix. Section 72. Goods improperly removed from warehouse, etc.—(1) In any of the following cases, that is to say,—

(a) where any warehoused goods are removed from a warehouse in contravention of section 71;

(b) where any warehoused goods have not been removed from a warehouse at the expiration of the period during which such goods are permitted under section 61 to remain in a warehouse;

2* * * *

(d) where any goods in respect of which a bond has been executed under 3[section 59 4***] and which have not been cleared for home consumption or 5[export or] are not duly accounted for to the satisfaction of the proper officer,

the proper officer may demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods together with 6[interest, fine and penalties] payable in respect of such goods

(2) If any owner fails to pay any amount demanded under sub-section (1), the proper officer may, without prejudice to any other remedy, cause to be detained and sold, after notice to the owner (any transfer of the goods notwithstanding) such sufficient portion of his goods, if any, in the warehouse, as the said officer may 7[deem fit].

x. Section 111. Confiscation of improperly imported goods, etc. -

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

- (a) any goods imported
- (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;
- (e)
- (f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;
- (g)
- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (m) [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 3 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

xi. 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(j) and 111(m), 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(j) and 111(m), 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 5[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, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;].....

xii. Section 114AA - 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.

xiii. Section 124. Issue of show cause notice before confiscation of goods, etc.

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

a. is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

b. is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

c. is given a reasonable opportunity of being heard in the matter:

PROVIDED that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

PROVIDED FURTHER that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

9.3. Public Warehouse Licensing Regulations, 2016:-

Public Warehouse Licensing Regulations, 2016 Notification No. 70/2016- Customs (N.T.) dated 14th May, 2016 G.S.R (E).-

1. Short title and commencement. – (1) These regulations may be called the Public Warehouse Licensing Regulations, 2016. (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. – (1) In these regulations, unless the context otherwise requires, - (a) "Act" means the Customs Act, 1962 (52 of 1962); (b) "applicant" means a person who applies for a licence for a public warehouse under section 57; (c) "public warehouse" means a site or building that is licensed as such by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, under section 57, wherein dutiable goods may be deposited; (d) "section" means section of the Act. (2) The words and expressions used herein and not defined in these regulations shall have the same meanings respectively as assigned to them in the said Act.

3. Licensing of public warehouse.- (1) Upon an application being made to license a public warehouse, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may issue a licence to an applicant who, - (a) is a citizen of India or is an entity incorporated or registered under any law for the time being in force; (b) submits an undertaking to comply with such terms and conditions as may be specified by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be; (c) furnishes a solvency certificate from a scheduled bank for a sum of two crore rupees: Provided that the condition of furnishing a solvency certificate shall not be applicable to an undertaking of the Central Government or State Government or Union territory or to ports notified under the Major Port Trusts Act, 1963 (38 of 1963); (2) The Principal Commissioner of Customs or Commissioner of Customs, as the case may be, shall not issue a licence to an applicant if, - (a) he has been declared an insolvent or bankrupt by a Court or Tribunal; (b) he has been convicted for an offence under any law for the time being in force; (c) he has been penalised for an offence under the Act, the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act, 1994 (32 of 1994); (d) he is of unsound mind and stands so declared by a competent Court; or (e) the Principal Commissioner of Customs or the Commissioner of Customs, as the case may be, is satisfied that- (i) the site or building of the proposed public warehouse is not suitable for secure storage of dutiable goods; (ii) the site or building of the proposed public warehouse is not suitable for general supervision by officers of customs; (iii) bankruptcy proceedings are pending against the applicant ; or (iv) criminal proceedings are pending against the applicant and the offences involved are of such nature that he is not a fit person for grant of licence.

4. Conditions to be fulfilled by applicant. – Where, after inspection of the premises, evaluation of compliance to the conditions under regulation 3 and conducting such enquiries as may be necessary, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that licence may be granted, he shall require the applicant to,- (a) provide an all risk insurance policy, that includes natural calamities, riots, fire, theft, skillful pilferage and commercial crime, in favour of the President of India, for a sum equivalent to the amount of duty involved on the dutiable goods proposed to be stored in the public warehouse at any point of time; (b) provide an undertaking binding himself to pay any duties, interest, fine and penalties payable in respect of warehoused goods under sub-section (3) of section 73A or under the Warehouse (Custody and Handling of Goods) Regulations, 2016; (c) provide an

undertaking indemnifying the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, from any liability arising on account of loss suffered in respect of warehoused goods due to accident, damage, deterioration, destruction or any other unnatural cause during their receipt, delivery, storage, dispatch or handling; and (d) appoint a person who has sufficient experience in warehousing operations and customs procedures as warehouse keeper.

5. Grant of licence. – Upon fulfillment of the conditions specified in regulation 3 and regulation 4, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may grant a licence in respect of the public warehouse subject to such conditions as deemed necessary.

6. Validity of licence. – Any licence granted under regulation 5 shall remain valid until and unless it is cancelled in terms of the provisions under section 58B or sub-regulation (2) of regulation 8.

3 RECORDS OF THE PERSONAL HEARINGS AND WRITTEN SUBMISSION

3.1 In order to comply to the Principles of Natural Justice, personal hearing letters were issued to all the Noticees with a request to appear before the Adjudicating Authority for personal hearing on 22.08.2025. In response to the same, none of the noticees either appeared on date or submitted any reply.

3.2 The second hearing was conducted on 17.10.2025. Again, none of noticees either appeared on date or submitted any reply.

3.3 The third hearing was conducted on 17.11.2025. None of the noticees appeared for personal hearing on date or submitted any reply.

Since sufficient opportunity has been given to all noticees and therefore now this case is being decided on the basis of investigation carried out by DRI and available records.

4 DISCUSSION AND FINDINGS

I have gone through the facts of the case and material on records. From the records and investigation carried out by DRI, I find that the following allegations has been made in the instant case:

Subject goods were illegally removed without payment of duty, redemption fine and penalty. Hence, the goods having redetermined value Rs. 4,21,365 were illegally removed from the warehouse by the syndicate members, the applicable duty of Rs. 3,62,037 /- as explained in Table No. 2 above is to be demanded under Section 28(4) of the Customs Act, 1962, from M/s Nishar Enterprises (ACIPN5957D) through its proprietorship, Shri Ketan Premji Nishar for his act of collusion, wilful mis-statement and suppression of facts. Further, the firm is also liable for a penalty under Section 114A and 114 AA of the Customs Act, 1962, as the duty has been evaded by means of collusion, wilful mis-statement and suppression of facts.

4.1 I find that the following issues involved in this case are to be decided:

- (i) Whether Adjudicated goods i.e. Pop It Toy Small, Pop It Toy Big and Dancing Cactus Toy having redetermined assessable value of Rs. 4,21,365 which were already confiscated under Section 111 (d) and 111 (m) of the Customs Act, 1962 should not be held liable for confiscation under Section 111(j) of the Customs Act, 1962.
- (ii) Whether duty amounting to Rs. 3,62,037/- (Rupees Three lakhs sixty two thousands and thirty seven only)(as mentioned in the Adjudication order for re-export) is to be

demand as per the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.

- (iii) Whether penalty under section 112(a) and 112(b) of the Customs Act, 1962 should not be imposed on various noticees.
- (iv) Whether penalty under Section 114AA of the Customs Act, 1962 should be imposed on Shri Salim Yusuf Millwala and Shri Rakesh Ramdas Jejurkar.
- (v) Whether penalty under Section 114A of the Customs Act, 1962 should be imposed on M/s Nishar Enterprises (ACIPN5957D).

5 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the Show Cause Notice; provision of the Customs Act, 1962, as well as documents / evidences available on record.

5.1 I find that the investigation of DRI has categorically established that syndicate members illegally removed the confiscated goods without payment of duty, redemption fine and, penalty. Hence, the goods of value Rs. 4,21,365/- were illegally removed from the warehouse by the syndicate members and the applicable duty of Rs. 3,62,037 (as mentioned in the Adjudication order for re-export) as explained in Table No. 2 in Para No. 1 above is to be demanded under Section 28(4) of the Customs Act, 1962, from M/s Nishar Enterprises (ACIPN5957D) through its proprietorship, Shri Ketan Premji Nishar, for their act of collusion, wilful mis-statement and suppression of facts. Further, the firm is also liable for a penalty under Section 114 A of the Customs Act, 1962, as the duty has been evaded by means of collusion, wilful mis-statement and suppression of facts.

I. Liability for Confiscation under Section 111(j)

- a. Section 111 of the Customs Act, 1962 prescribes confiscation of improperly imported goods. Clause (j) thereof provides that "any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;" shall be liable to confiscation. The legislative intent behind Section 111(j) is to ensure legality of the process and proper documentation in order to avoid use of fraudulent means for clearance of goods.
- b. In the instant case, I find that M/s Nishar Enterprises (ACIPN5957D) through its proprietorship Shri Ketan Premji Nishar by creating a copy of a checklist of a dummy/fake Shipping Bill got the confiscated goods removed from the customs bonded warehouse i.e. Raghava Warehousing and Logistic Services Pvt. Ltd. (NSA1U 047) in the guise of re-export, whereas actual goods were taken to the local market instead of re-exporting the same without payment of duty, redemption fine and, penalty attracting the provisions of Section 111(j) of the Customs Act as per the investigation conducted by the DRI. Hence, the goods imported under the Bills of Entry enumerated in Table No. 2 in Para No. 1 are held liable to confiscation under Section 111(j).
- c. However, it is noted that the subject goods have already been cleared and are not physically available for seizure. On the issue whether redemption fine can still be imposed in such circumstances, I rely upon the ratio of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Ltd. [2018 (9) G.S.T.L. 142 (Mad.)], wherein it was held as under:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields... The availability of the goods is not necessary for imposing the redemption fine. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act... Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

- d. The above legal view was subsequently followed by the Hon'ble Gujarat High Court in M/s Synergy Fertichem Pvt. Ltd. [2020 (33) G.S.T.L. 513 (Guj.)], reaffirming that redemption fine may be imposed even where the goods are no longer physically available, provided that confiscation is otherwise authorized under the Act. These decisions remain unchallenged and are therefore good law.
- e. I further note that the judgment of the Hon'ble Madras High Court in Visteon Automotive Systems India Ltd. (supra) relied upon the earlier decision of the Hon'ble Bombay High Court in Finesse Creations Inc. [2009 (248) E.L.T. 122 (Bom.)], affirmed by the Hon'ble Supreme Court [2010 (255) E.L.T. A120 (S.C.)], which held that the power to impose redemption fine flows from the authority to confiscate under Section 111 and does not depend on physical custody of the goods.
- f. In view of the above judicial pronouncements, I hold that though the goods valuing at Rs. 4,21,365/- (Rupees Four Lakhs Twenty one Thousand Three Hundred and Sixty five only) illegally cleared by M/s Nishar Enterprises (ACIPN5957D) from the warehouse are not available for confiscation, the act of misdeclaration has rendered them liable for confiscation under Section 111(j). Therefore, a redemption fine is imposable under Section 125 of the Customs Act, 1962.

II. Duty (as mentioned in the Adjudication order for re-export) totally amounting to Rs. 3,62,037/- (Rupees Three Lakhs Sixty Two Thousand and thirty seven only), as illustrated in Table No. 2 in Para No. 1.

I find that the importer, in the instant case was liable to pay duty as per the adjudication order 1388/2022-23/ADC/Gr.VI/NS-V/CAC/JNCH dated 15.02.2023. However, I find that the importer removed the confiscated goods without paying any duty, fine and penalty and wilfully did not fulfil the liability as per adjudication order mentioned above. Accordingly, the demand of Rs. Rs. **3,62,037/-** is confirmed under Section 28(4).

In the present case, I have already held in the preceding paragraphs that the duty amounting to Rs. **3,62,037/-** is recoverable from **M/s Nishar Enterprises (ACIPN5957D)** under Section 28(4) of the Customs Act, 1962,. Accordingly, in terms of Section 28AA, interest on the aforesaid amount of differential duty is also recoverable from the importer, calculated from the date of short-payment till the date of actual payment.

Penalty under Sections 114 A of the Customs Act, 1962 on M/s Nishar Enterprises (ACIPN5957D)

Section 114A provides for non-levy of duty or short levy of duty due to certain reasons. In the present case, it is established from the investigation carried out by DRI that the importer M/s Nishar Enterprises (ACIPN5957D) secured illegal delivery of goods from warehouse without payment of duty, fine and penalty. This constitutes use of false statements, declarations within the meaning of Section 114A. Accordingly, penalty under Section 114A on M/s Nishar Enterprises (ACIPN5957D) is justified. Further,

M/s Nishar Enterprises (ACIPN5957D) colluded with other syndicate members in clearing the subject goods illegally thereby violating various provisions of the Customs Act, 1962.

III. Penalty under Section 112(a) of the Customs Act, 1962 on M/s Nishar Enterprises (ACIPN5957D)

Section 112(a) of the Customs Act, 1962 provides that —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(j) and 111(m), or abets the doing or omission of such an act.

In the present case, M/s Nishar Enterprises (ACIPN5957D) removed the goods, which were allowed to be re-exported, from the warehouse by using a fake shipping bill. Due to this act, restricted goods were imported and subsequently were illegally removed from the warehouse. Hence, for the acts of omission and commission in the illegal removal of the adjudicated goods having a value of around Rs. 4,21,365/- from the Customs Area on the basis of fake shipping bill, which appears to have rendered the said goods liable for confiscation under Section 111 (j), as explained above, M/s Nishar Enterprises through its proprietorship Shri Ketan Premji Nishar is liable to penalty under Section 112 (a) of the Customs Act, 1962.

IV. Penalty under Section 114AA on Shri Salim Yusuf Millwala and Shri Rakesh Ramdas Jejurkar.

- a. Section 114AA of the Customs Act, 1962 provides 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 purposes of this Act, such person shall be liable to a penalty not exceeding five times the value of the goods.”
- b. Section 114AA penalizes any person who knowingly makes or uses false documents. In the instant case, from the investigation conducted by DRI, I find that Shri Salim Yusuf Millwala and Shri Rakesh Ramdas Jejurkar made fake checklist of a shipping bill and goods which were allowed to be re-exported, were removed from the warehouse on the basis of such fake documents.
- c. Therefore, I hold that Shri Salim Yusuf Millwala and Shri Rakesh Ramdas Jejurkar are liable to penalty under Section 114AA of the Customs Act, 1962, as they knowingly and intentionally, alongwith their co-conspirators removed the adjudicated goods from the Customs Area and they very well knew the fact that the said illegal removal of the goods without the payment of applicable Customs duty will make the said goods liable for confiscation by making fake documents and submitting the same at the warehouse.

V. Penalty under Sections 112(b) of the Customs Act, 1962 on various noticees.

- a) Section 112(b) of the Customs Act, 1962 provides that any person 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(j) and 111(m), 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 5[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, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;].....

b.) In the present case, the importer alongwith the syndicate members removed confiscated goods illegally by creating a checklist and dummy/fake shipping bill, that rendered such goods liable for confiscation under Section 111(j) of the Customs Act, 1962. Further it is clear from the investigation carried out by DRI, that Shri Salim Yusuf Millwala, Shri Rakesh Ramdas Jejurkar and Shri Prashant Bhagwan Nalawade alias Babu illegally removed the goods from the Customs Bonded Warehouse and took the delivery of the impugned goods and transported them to a warehouse situated at Bhiwandi. I hold that Shri Salim Yusuf Millwala, Rakesh Ramdas Jejurkar and Shri Prashant Bhagwan Nalawade alias Babu is liable to penalty under Sections 112(b) of the Customs Act, 1962.

c.) I find that the investigation of DRI has categorically established that,

(i) **Shri Salim Yusuf Millwala** after the issuance of the adjudication order of re-export of the goods on the payment of the redemption fine, approached Shri Rakesh Ramdas Jejurkar for the illegal removal of the adjudicated goods from the warehouse in exchange of monetary consideration of Rs. 3 Lakhs. Shri Rakesh Ramdas Jejurkar prepared a fake shipping bill on the directions of Shri Salim Yusuf Millwala and got cleared the goods from the warehouse and delivery of the 132 cartons of the goods was given to Shri Salim Yusuf Millwala. The said goods were later sold in the Masjid Area. He admitted the above details and also confirmed that he had taken the IEC from Shri Ketan Premji Nishar for importing goods. I hold that Shri Salim Yusuf Millwala is liable to penalty under Section 112 (b) of the Customs Act, 1962.

(ii) **Shri Rakesh Ramdas Jejurkar** prepared a fake checklist for the Shipping Bill showing the re-export of goods from his employee. The fake checklist of the shipping bill bearing number 6931546 dated 12.06.2023 was used for taking the goods out of the said warehouse and the same were taken to a godown in Bhiwandi, which was arranged by Shri Salim Yusuf Millwala. On his instructions, the transport was arranged and Shri Prashant Bhagwan Nalawade took the delivery of the goods from the warehouse. Hence, for his acts of omission and commission in the illegal removal of the confiscated goods having a value of Rs. 4,21,365/- from the Customs Area on the basis of fake checklist of a shipping bill, that rendered such goods liable for confiscation under Section 111 (j) of the Customs Act, 1962, I hold Shri Rakesh Ramdas Jejurkar liable to penalty under Section 112 (b) of the Customs Act, 1962.

(iii) **Shri Prashant Bhagwan Nalawade alias Babu Bisleri**:- Shri Prashant Bhagwan Nalawade alias Babu Bisleri was also involved in the illegal removal of adjudicated goods

from Raghava Warehousing and Logistic Services Pvt. Ltd. (NSA1U 047) on the basis of fake shipping bill. On the directions of Shri Rakesh Ramdas Jejurkar, he went to the said warehouse alongwith the requisite documents provided by Shri Rakesh Ramdas Jejurkar to take the delivery of the goods covered under the bill of entry no. 3095828 dated 30.10.2022. He was provided with a fake shipping bill bearing no. 6931546 dated 12.06.2023 by Shri Rakesh Ramdas Jejurkar and based on the said fake shipping bill, he took the delivery of the impugned goods and transported them to a warehouse situated at Bhiwandi on the directions of Shri Rakesh Ramdas Jejurkar. Hence, for his acts of omission and commission in the illegal removal of the adjudicated goods having a value of around Rs. 4,21,365/- from the Customs Area on the basis of fake shipping bill, which appears to have rendered the said goods liable for confiscation under Section 111 (j), as explained above, Shri Prashant Bhagwan Nalawade alias Babu Bisleri appears liable to penalty under Section 112(b) of the Customs Act, 1962.

- 6 Since the improper importation of goods has also resulted in short levy of customs duty, which has been demanded under Section 28(4) of the Customs Act, 1962, the importer is further liable to penalty under Section 114A of the Act. However, it is observed that penalties under Sections 112(a)/112(b) and 114A are mutually exclusive. The fifth proviso to Section 114A specifically provides that where a penalty is imposed under Section 114A, no penalty shall be imposed under Section 112 or Section 114 in respect of the same act or omission.

- 7 In view of the above discussions, I pass the following order:

ORDER

- I. I order to confiscate the goods i.e. Pop It Toy Small, Pop It Toy Big and Dancing Cactus Toy having re determined assessable value of Rs. 4,21,365/- (Rupees Four Lakhs Twenty One Thousands Three Hundred and Sixty Five only) (which were already confiscated under Section 111 (d) and 111 (m) of the Customs Act, 1962) under Section 111(j) of the Customs Act, 1962. However, the goods are not physically available for confiscation. I impose a redemption fine of Rs. 4,21,365 /-(Rupees Four Lakhs Twenty One Thousands Three Hundred and Sixty Five only) under Section 125 of Customs Act, 1962.
- II. I confirm the duty demanded and order to recover the duty amounting to Rs. 3,62,037 /- (Rupees Three Lakh Sixty two Thousand and thirty seven only) (as mentioned in the Adjudication order for re-export)) from M/s Nishar Enterprises (ACIPN5957D) under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA from the date of short-payment till the date of actual payment.
- III. I impose penalty equal to the duty i.e Rs. 3,62,037 /- (Rupees Three Lakh Sixty two Thousand and thirty seven only) and interest under Section 114A of the Customs Act, 1962 on M/s Nishar Enterprises (ACIPN5957D).
- III I impose,
 - a) a penalty of Rs. 4,21,365/- (Rupees Four Lakhs Twenty One Thousands Three Hundred and Sixty Five only) on Shri Salim Yusuf Millwala under Section 114 AA of the Customs Act, 1962.
 - b) a penalty of Rs. 2,50,000/- (Rupees Two Lakhs fifty thousands only) on Shri Salim Yusuf Millwala under Section 112(b) of the Customs Act, 1962.
- IV I impose,

- a) a penalty of Rs. 4,21,365/- (Rupees Four Lakhs Twenty One Thousands Three Hundred and Sixty Five only) on Shri Rakesh Ramdas Jejurkar under Section 114 AA of the Customs Act, 1962.
- b) a penalty of Rs. 2,50,000/- (Rupees Two Lakhs fifty thousands only) on Shri Rakesh Ramdas Jejurkar under Section 112(b) of the Customs Act, 1962.

V I impose a penalty of Rs Rs. 4,21,365/- (Rupees Four Lakhs Twenty One Thousands Three Hundred and Sixty Five only) on Shri Prashant Bhagwan Nalawade alias Babu Bisleri under Section 112(a) of the Customs Act, 1962.

10. This order is issued without prejudice to any other action that may be taken against the said company or persons or any other companies or persons concerned with the said goods, under the Customs Act, 1962, and /or any other law for the time being in force in the republic of India.

(डॉ. सतीश कुमार / Dr. Satish Kumar)

अतिरिक्त आयुक्त, सीमा शुल्क / Additional Commissioner of Customs

ग्रुप-VB, एनएस-V, जेएनसीएच / Gr.VB, NS-V, JNCH

To:

1. **Shri Ketan Premji Nishar**, Proprietor of M/s. Nishar Enterprises (ACIPN5957D)
Block No. 6, Bhakti Apartment,
Kapad Bazar, Panvel
Maharashtra- 410206.
Mob No. 9820183465.

2. **Shri Salim Yusuf Millwala**
11/15, Yusuf Mansion, 2nd Floor,
Room No. 21, Dontad Street Khadak, Chinch Bunder,
Chinchbunder, Mumbai-400009
Mb. No. 8591630971

3. **Rakesh Ramdas Jejurkar**
Flat No. 102, Plot No. 01,
Om Driya Heights, Sector-09,
Kamothe, Navi Mumbai- 410209.
Mb. No. 9821760777

4. **Shri Prashant Bhagwan Nalawade alias Babu Bisleri**
10/2, Shivkrupa Chawl, Ganesh Maidan,
Sainath Nagar Road, Near Sagar Park,
Mumbai- 400086.

Copy to:-

1. The Dy./Asstt Commissioner of Customs, Review Cell, JNCH.
2. The Dy./Asstt Commissioner of Customs, Recovery Cell, JNCH.
3. The Dy./Asstt. Commissioner of Customs, Group VI, JNCH.
4. The Addl. Director, DRI, MZU, Mumbai.
5. The Dy./Asstt. Commissioner of Customs, EDI, JNCH.....for uploading on website.
6. Notice Board....through Superintendent (CHS Section), JNCH.
7. Office Copy.

