



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-ऊरण, डिस्ट-राइगड, महाराष्ट्र-४००७०७.  
**TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400707.**

F. No.: S/10-48/2025-26/ADC/GrVB/NS-V/CAC/JNCH

Date of Order: 28.11.2025

Date of issue: 28.11.2025

Passed By: **Shri Satish Kumar**

**Additional Commissioner of Customs, NS-V**

DIN- **20251178NX0000417318**

**Order-In-Original No. 1241/2025-26/ADC/GR.VB/NS-V/CAC/JNCH**

(Arising out of SCN No. 192/2025-26/ADC/Gr.VB/NS-V/CAC/JNCH dated 28.05.2025)

**Noticee: M/s. PUR ENERGY PRIVATE LIMITED, (IEC 0916905624)**

**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 - रायगढ़, 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. PUR ENERGY PRIVATE LIMITED, (IEC 0916905624) having their principal place of business at H.No.10-38/2 SY No. 424/AA3KANDI VILLAGE, SANGAREDDY, SANGAREDDY-502285, holding the IEC (Import-Export) No.0916905624, (hereinafter referred to as 'Importer') had cleared their imported items vide Bill of Entries as mentioned in Table-A, Table-B, Table-C& Table-D.

During the course of Premise Audit, following discrepancies were noticed in respect of imports of multiple items.

**Import of Parts of Battery-operated Bicycles –**

The Importer have imported Epoxy Plate of different thickness vide bills of entry mentioned in Annexure-A & table –A below, and classified under CTH 39073090 which pertains to Epoxy Resin in primary form but, the imported goods are Epoxy Plate of different thickness and appears to classifiable under heading 39219099 and BCD@ 10% is applicable instead of 7.5% duty paid by Importer. It is also pertinent to mention that identical goods have already been imported and cleared under the correct CTH 39219099 with paying BCD@10%. Hence, the differential duty of Rs. 86,740.43/- with applicable interest and penalty, is recoverable.

**Table-A**

Sl. No.	Customs Site	BE Number	BE Date	Assessable Value Amount (in Rs.)	Total Duty Amount (in Rs.)	DUTY TO BE PAID @30.98% (in Rs.)	DIFFERENTIAL DUTY (in Rs.)
1	INNSA1	5367422	09-09-2021	675289.5	187291.6	209204.68	21913.08
2	INNSA1	9644191	20-11-2020	594602.7	164913	184207.91	19294.91
3	INNSA1	9644191	20-11-2020	455604.6	126361.9	141146.32	14784.42
4	INNSA1	8406545	07-08-2020	358277.5	99368.3	110994.37	11626.07
5	INNSA1	9115899	09-10-2020	254429.4	70566	78822.21	8256.21
6	INNSA1	8406545	07-08-2020	137799.1	38218.6	42690.15	4471.55
7	INNSA1	9310121	24-10-2020	118800	32949.2	36804.24	3855.04
8	INNSA1	9310121	24-10-2020	51975.01	14415.2	16101.86	1686.66
9	INNSA1	9115899	09-10-2020	26268.53	7285.5	8137.99	852.49
	<b>Total</b>			<b>26,73,046</b>			<b>86,740.43</b>

**Import of Aging Machines-**

The Importer have imported Aging Machines vide bills of entry mentioned in Annexure-B & table-B below and classified them under CTH 90319000 which pertains to Parts but the imported goods appear to be classifiable under heading 90318000 and BCD@ 15% is applicable instead of 7.5% duty paid by Importer. It is also pertinent to mention that identical goods have already been imported and cleared vide Bill of Entry No. 3067925 dated 28.10.2022 under the correct CTH 90318000 with payment of merit customs duty. Hence, the differential duty of Rs. **5,05,141.54/-** with applicable interest and penalty, is recoverable.



**Table-B**

Sl. No.	Customs Site	BE Number	BE Date	Assessable Value Amount (in Rs.)	Total Duty Amount (in Rs.)	DUTY TO BE PAID @30.98% (in Rs.)	DIFFERENTIAL DUTY (in Rs.)
1	INBOM4	9757958	28-07-2022	3802327	1054575	1177960.82	123385.42
2	INNSA1	5718789	05-10-2021	1893132	525060.3	586492.44	61432.14
3	INNSA1	6862169	28-12-2021	1702952	472313.7	527574.47	55260.77
4	INNSA1	2215217	29-08-2022	1648694	457265.4	510765.54	53500.14
5	INNSA1	3730995	27-04-2021	870150	241336	269572.46	28236.46
6	INNSA1	9566397	13-11-2020	745220.6	206686.9	230869.35	24182.45
7	INNSA1	5718789	05-10-2021	392431.6	108840.9	121575.32	12734.42
8	INBOM4	9390673	31-10-2020	363669.1	100863.6	112664.68	11801.08
9	INNSA1	9115899	09-10-2020	345131.6	95722.3	106921.76	11199.46
10	INNSA1	4648109	12-07-2021	301225.9	83545	93319.79	9774.79
11	INNSA1	3730995	27-04-2021	1196522	331855.5	370682.57	38827.07
12	INNSA1	3776884	30-04-2021	797462.1	221176.2	247053.76	25877.56
13	INNSA1	9567083	13-11-2020	410831.3	113944.1	127275.55	13331.45
14	INNSA1	9862633	07-12-2020	392490.5	108857.3	121593.57	12736.27
15	INBOM4	9390673	31-10-2020	385067.9	106798.6	119294.04	12495.44
16	INNSA1	5718789	05-10-2021	305085.6	84615.4	94515.52	9900.12
17	INNSA1	4648109	12-07-2021	14376.69	3987.4	4453.90	466.50
				<b>1,59,20,927/</b>		<b>Total</b>	<b>5,05,141.54</b>

**Import of Automatic Spot-Welding Machine: -**

The Importer have imported AUTOMATIC SPOT-WELDING MACHINE vide bills of entry mentioned in Annexure-C & table-C below, and classified the same under CTH 84682090 which pertains to Parts of welding machine but the imported goods are AUTOMATIC SPOT-WELDING MACHINE and appears to be classifiable under heading 85152110 and BCD@15% is applicable instead of 7.5% duty. It is also pertinent to mention that identical goods have already been imported and cleared vide Bill of Entry No.9390673 dated 31.10.2020 and others under the correct CTH 85152110 with



payment of merit customs duty. Hence, the differential duty of Rs. **33,016.3/-** with applicable interest and penalty, is recoverable.

**Table-C**

Sl No.	Customs Site	BE Number	BE Date	Assessable Value Amount (in Rs.)	Total Duty Amount (in Rs.)	DUTY TO BE PAID @30.98% (in Rs.)	DIFFERENTIAL DUTY (in Rs.)
1	INBOM4	9390673	31-10-2020	873566.1	242283.6	270630.78	28347.18
3	INNSA1	7477786	14-02-2022	143886.1	39906.8	44575.92	4669.12
			<b>Total</b>	<b>10,17,452</b>			<b>33,016.3</b>

**Import of Cell Holder: -**

The Importer have imported Cell Holder for holding Li-ion Battery in the Battery pack vide bills of entry mentioned in Annexure-D & table-D below, and classified the same under CTH 90279090 which pertains to Parts and accessories of Instruments and Apparatus for Physical or Chemical Analysis but the imported goods are articles of plastics and appears to be classifiable under heading 39269099 and BCD@ 15% is applicable instead of 7.5% duty paid by Importer. Hence, the differential duty of Rs. **1,95,430/-** with applicable interest and penalty, is recoverable.

**Table-D**

Sl. No.	Customs Site	BE Number	BE Date	Assessable Value Amount (in Rs.)	Total Duty Amount (in Rs.)	DUTY TO BE PAID @37.47% (in Rs.)	DIFFERENTIAL DUTY (in Rs.)
1	INNSA1	9212852	21-06-2022	799284.5	221681.5	299491.90	77810.40
2	INNSA1	9212852	21-06-2022	562696.3	156063.8	210842.28	54778.48
3	INNSA1	7169524	21-01-2022	284562.4	78923.4	106625.53	27702.13
4	INNSA1	9212852	21-06-2022	203977.4	56573.1	76430.34	19857.24
5	INNSA1	9212852	21-06-2022	156979.5	43538.3	58820.21	15281.91
<b>Total 20,07,500/-</b>							<b>1,95,430/-</b>

**2. Relevant Legal Provisions that relate to the facts of the case are brought out below:**

(i) **Section 46** of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of the Section 46(4) reproduces below:



"(4) the importer while presenting 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)".

(ii) **Section 28(4)** of the Customs Act, 1962 provides, 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 (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.

(iii) **Section 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 there under, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall in addition to such duty, 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.

I. **Section 111(m):** Confiscation of improperly imported goods, etc.

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

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 goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of Section 54.

II. **Section 112(a):** Penalty for improper importation of goods, etc. Any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act shall be liable, -

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

(ii) in the case of dutiable goods, other than prohibited goods, 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:

(vi) **Section 114A:** Penalty for short-levy or non-levy of duty in certain cases—Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub- section (8) of Section 28 shall also be liable to pay penalty equal to the duty or interest so determined.

(vii) **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.

**3. Invocation of extended period of demand under section 28(4) of the Customs Act, 1962.**

From perusal of the import data of the importer it is seen that, at some point of time, identical goods have been classified by the importer under correct CTHs as proposed above and duty has been paid appropriately. The Importer was aware of the correct classification for the imported goods in the above Paras from the fact that majority of the imported goods imported have been subjected to the higher rate of the duty. However, the Importer has wilfully misclassified the goods under multiple CTHs and paid lower duty and the wrong classification resulted in loss of revenue. Total Differential Basic customs duty including, Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to **8,20,328/-** (Rupees Eight Lakhs Twenty Thousand Three Hundred and Twenty-Eight only), is illustrated below in Table-E :-

**Table-E**

S/N	Items	Table	Assessable Value	Differential Duty
1.	Import of Parts of Battery-operated Bicycles	Table-A	26,73,046/-	86,740.43/-
2.	Import of Aging Machines	Table-B	1,59,20,927/-	5,05,141.54/-
3.	Import of Automatic Spot-Welding Machine	Table-C	10,17,452/-	33,016.3/-
4.	Import of Cell Holder	Table-D	20,07,500/-	1,95,430/-



	<b>Total</b>	<b>2,16,18,925/-</b>	<b>8,20,328.27/-</b>
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4.1 Further, the Importer did not submit any explanation for adoption of different classification for same set class of goods. It also shows that the Importer was aware of the existence of correct classification of the goods. Hence, it appears that the Importer deliberately misclassified the goods with intention to pay lower duty.

4.2 Further, the Importer has not replied comprehensibly to the Paras raised. Therefore, from analysis of the circumstantial evidences and previous imports made by the Importer, it is observed that Importer had deliberately mis-classified the impugned goods as mentioned in the Audit Report. Therefore, department is well within their right to demand customs duty for extended period as stipulated under Section 28 (4) of the customs act, 1962.

4. It is the bounden duty of the importer to ascertain correctness of the duty paid by him. In this case, Importer failed to correctly self-assess the duty on the impugned goods. Further, it was the responsibility of the Importer to ascertain correctness of the declaration made by him.

#### **RECORDS OF THE PERSONAL HEARINGS AND WRITTEN SUBMISSION**

5. In order to comply the Principle of Natural Justice, personal hearing letters were issued to the noticee with a request to appear before Adjudicating Authority for personal hearing and The importer, vide their letter dated 15.07.2025, authorized Mr. Sandeep Reddy, Head (Finance), to represent the company and attend hearings virtually. The first personal hearing was not attended by the noticee. The second personal hearing was held on 16.07.2025, during which Mr. Sandeep Reddy Finance Head of the the importer submitted that they need 15 more days to respond to the instant Show cause notice. The request was granted, and the importer was directed to submit a reply by 31.07.2025.

The third hearing was conducted on 10.10.2025 and Shri Sandeep Reddy again appeared online and agreed to some of the objections raised in the SCN but sought an additional week to file a comprehensive written reply. He was clearly informed that failure to submit a reply by 17.10.2025 would result in adjudication based on records available. The importer requested for one more personal hearing which was granted and scheduled for 26.11.2025. The authorized representative, Mr. M. Vishnuvardhan Reddy, appeared and stated that though they have not submitted any written reply letter to the notice and they also have not brought any written reply to the notice, it can be said that the goods in question are not identical to the earlier imported goods and therefore, they do not agree with the allegation made in the notice. However, they have nothing to substantiate the above said statement. Therefore, he requested to close the proceedings. Accordingly this case is being decided on the basis of available records, documents, and departmental findings.



## **DISCUSSION AND FINDINGS**

6. I have gone through the facts of the case, material on case records, including the import documents and the submissions made by the Importer during personal hearing, I find the following facts emerge:

7. M/s. PUR ENERGY PRIVATE LIMITED imported multiple consignments as detailed in Tables A to D of the subject Show Cause Notice (SCN) dated 28.05.2025. The goods were declared under various Customs Tariff Headings (CTH) viz. 39073090, 90319000, 84682090 and 90279090. Audit scrutiny revealed misclassification of the imported goods resulting in short payment of customs duty aggregating to Rs. 8,20,328/-. The SCN proposed reclassification, recovery of differential duty under Section 28(4) of the Customs Act, 1962, interest under Section 28AA, confiscation under Section 111(m) and imposition of penalties under Sections 112(a), 114A and 114AA.

Now, on a careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case which are required to be decided:

- (i) Whether classification declared under CTH 39073090 (Epoxy Plate) should be rejected and reclassified under CTH 39219099.
- (ii) Whether classification declared under CTH 90319000 (Aging Machine) should be rejected and reclassified under CTH 90318000.
- (iii) Whether classification declared under CTH 84682090 (Automatic Spot-Welding Machine) should be rejected and reclassified under CTH 85152110.
- (iv) Whether classification declared under CTH 90279090 (Cell Holder) should be rejected and reclassified under CTH 39269099.
- (v) Whether the goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.
- (vi) Whether the differential duty amounting to Rs. 8,20,328/- is recoverable under Section 28(4).
- (vii) Whether interest is payable under Section 28AA.
- (viii) Whether penalty under Sections 112(a) and 114A is imposable and Whether penalty under Section 114AA is warranted.

8. 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 SCN; provision of the Customs Act, 1962, as well as Noticee' written submissions and documents/ evidences available on record.

### **I. Classification under CTH 39073090 vs. 39219099 – Epoxy Plates**

- a. I have carefully examined the description of goods, import documents, and the audit findings. The importer has declared the impugned goods as "Epoxy Resin



in primary form” under CTH 39073090. However, upon detailed scrutiny of invoices, catalogues, and product samples, it is evident that the goods imported were in the form of Epoxy Plates of varying thicknesses, which are semi-finished solid plastic sheets, not in liquid or molten form.

- b. As per Chapter Note 6 to Chapter 39 of the Customs Tariff, the term “primary forms” includes liquids, pastes, lumps, granules, and flakes, but does not include plates, sheets, or blocks. Thus, once the resin is converted into a solid plate, it ceases to remain in its primary form. Such products are covered by Heading 3921, which specifically provides for “Other plates, sheets, film, foil and strip, of plastics.”
- c. Further, I note from records that identical Epoxy Plates have previously been imported by the same importer under CTH 39219099, and the goods were duly assessed at the higher duty rate of BCD @10%. This establishes that the importer was aware of the correct classification but nevertheless declared the impugned goods under an incorrect heading attracting a lower rate of duty @7.5%.
- d. The classification of goods under the Customs Tariff must be based on the condition of goods at the time of importation, their essential character, and functional usage, as upheld by the Hon’ble Supreme Court in *Hindustan Ferodo Ltd. v. CCE* [1997 (89) ELT 16 (SC)] and *CC v. Northern Plastics Ltd.* [1999 (113) ELT 3 (SC)]. In light of these principles, the goods being semi-finished plastic plates are appropriately classifiable under CTH 39219099, attracting BCD @10%. The importer’s declaration under CTH 39073090 is therefore rejected.

## **II. Classification under CTH 90319000 vs. 90318000 – Aging Machine**

- a. The importer has declared the imported equipment as “Parts of Measuring Instruments” under CTH 90319000. Audit examination and technical literature, however, clearly establish that the goods are complete Aging Machines used for testing and measurement of electrical characteristics of batteries and cells. These are not “parts” but complete testing instruments.
- b. As per HSN Explanatory Notes to Heading 9031, Heading 903180 covers “Other instruments and apparatus for measuring or checking electrical quantities,” and includes stand-alone machines designed for such measurement and testing purposes. Furthermore, Section Note 2(a) to Section XVI provides that parts which constitute complete machines capable of performing independent functions are to be classified as the complete machines themselves.
- c. The importer’s description of the goods as “parts” is therefore not sustainable. The correct classification is under CTH 90318000, which specifically covers such testing and measuring apparatus, attracting BCD @15%. I observe that primary function and essential nature of a product are determinative for classification. Since the imported goods are capable of independently performing measurement and testing functions, they merit classification under CTH 90318000.



### **III. Classification under CTH 84682090 vs. 85152110 – Automatic Spot-Welding Machine**

- a. The importer has declared the impugned goods as “Parts of Welding Machines” under CTH 84682090. However, the documents and inspection report reveal that the goods imported were complete Automatic Spot-Welding Machines, fully capable of performing resistance welding of metals.
- b. Heading 85152110 specifically provides for “Automatic resistance welding machines for spot welding of metals.” The HSN Explanatory Notes to Heading 8515 further clarify that this heading includes all forms of electric welding machines, whether manual or automatic, and covers those employing resistance welding techniques.
- c. It is well settled that when goods are imported in a condition fit for immediate functional use, they must be classified as complete machines rather than as parts, as laid down in *CCE v. H.M.M. Ltd.* [1995 (76) ELT 497 (SC)]. In the present case, the product is a complete welding machine, with its own control panel and integrated automation.
- d. Accordingly, the correct classification of the imported goods is CTH 85152110, attracting BCD @15%, as against the wrongly declared CTH 84682090. The importer’s declaration is therefore rejected, and the departmental classification is upheld.

### **IV. Classification under CTH 90279090 vs. 39269099 – Cell Holders**

- a. The importer has declared the impugned items as “Parts of Instruments and Apparatus for Physical or Chemical Analysis” under CTH 90279090. However, audit examination of the product literature and sample photographs reveals that the items are simple plastic holders used to hold individual Li-ion battery cells within a battery pack.
- b. These goods are not analytical instruments, nor are they parts of such apparatus. They are essentially moulded plastic components designed to physically secure battery cells. As such, they do not perform any analytical, electrical, or measuring function. Chapter Note 2(p) to Chapter 39 explicitly provides that articles of plastics not elsewhere specified or included are to be classified under Heading 3926. Accordingly, the goods are correctly classifiable under CTH 39269099, which covers “Other articles of plastics.”
- c. I also note that the importer has, in past consignments, imported similar holders and correctly declared them under Heading 39269099. This demonstrates that the importer was fully aware of the correct classification but chose to misdeclare them as parts of scientific instruments, evidently to avail the lower duty rate of 7.5%. Therefore, the departmental classification under CTH 39269099 (BCD @15%) is upheld, and the importer’s classification under CTH 90279090 is rejected as unsustainable in law.



## **V. Liability for Confiscation under Section 111(m)**

- a. Section 111 of the Customs Act, 1962 prescribes confiscation of improperly imported goods. Clause (m) thereof provides that “any goods which do not correspond in respect of value or in any other particular with the entry made under this Act” shall be liable to confiscation. The legislative intent behind Section 111(m) is to ensure veracity and accuracy of the particulars declared in the Bill of Entry, including value, quantity, description, classification and rate of duty.
- b. In the instant case, I find that M/s Pur Energy Private Limited imported various items under the self-assessment procedure but misdeclared the classification headings (CTHs) in respect of Epoxy Plates, Aging Machines, Spot-Welding Machines and Cell Holders, thereby applying incorrect rates of Basic Customs Duty and IGST. The importer declared lower-rate tariff entries despite having previously imported identical goods under correct CTHs. This conscious and deliberate misdeclaration of classification and duty rate constitutes a material misstatement attracting the provisions of Section 111(m) of the Act. Hence, the goods imported under the Bills of Entry enumerated in Tables A to D of the Show Cause Notice are held liable to confiscation under Section 111(m).
- 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 imported by M/s Pur Energy Private Limited are not available for confiscation, the act of misdeclaration has rendered them liable for confiscation under Section 111(m). Therefore, a redemption fine is imposable under Section 125 of the Customs Act, 1962, as the importer's misdeclaration of classification and IGST applicability constitutes a material variance "in any other particular" within the meaning of Section 111(m).

**VI. Differential Basic customs duty including, Social Welfare Surcharge (SWS) and Integrated Goods & Service Tax (IGST) totally amounting to Rs. 8,20,328/- (Rupees Eight Lakhs Twenty Thousand Three Hundred and Twenty-Eight only), as illustrated in Table A to Table D, and totalled in Table-E.**

I find that the importer, in the instant case, has wilfully misdeclared the classification of imported goods under incorrect Customs Tariff Headings (CTHs) with the intention to evade payment of appropriate customs duty. The importer classified functional and complete machines as "parts" and certain semi-finished products under headings meant for "primary forms," thereby claiming lower rates of duty than those actually applicable. The short payment of Rs. 8,20,328/- arose due to wilful misclassification. Accordingly, the demand of Rs. 8,20,328/- (including BCD, SWS & IGST) is confirmed under Section 28(4).

**VII. Interest under Section 28AA of the Customs Act, 1962.**

- a. As per the provisions of Section 28AA of the Customs Act, 1962, any person who is liable to pay duty in accordance with Section 28 shall, in addition to such duty, be liable to pay interest at the rate specified under sub-section (2) of Section 28AA, irrespective of whether such payment is made voluntarily or after determination of the duty.
- b. The statutory intent of Section 28AA is clear and mandatory — whenever there is a short-levy or short-payment of duty, the interest liability arises automatically as a consequence of such non-payment or delayed payment. The provision does not require any independent mens rea or separate adjudication.
- c. In the present case, I have already held in the preceding paragraphs that the differential customs duty amounting to Rs. 8,20,328/- is recoverable from M/s. Pur Energy Private Limited 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.

**VIII. Penalty under Sections 112(a) and/or 114A of the Customs Act, 1962**

- a. I find that the importer, in the instant case, has wilfully misdeclared the classification of imported goods under incorrect Customs Tariff Headings (CTHs) with the intention to evade payment of appropriate customs duty. The importer classified functional and complete machines as "parts" and certain semi-finished



products under headings meant for “primary forms,” thereby claiming lower rates of duty than those actually applicable.

- b. It is pertinent to note that the scheme of self-assessment, introduced vide the Finance Act, 2011 and codified under Section 17(1) of the Customs Act, 1962, casts an obligation on every importer to correctly assess the duty leviable on imported goods. Further, under Section 46(4) of the Act, the importer must declare truthfully the description, classification, value, and other particulars of the imported goods in the Bill of Entry, and subscribe to a declaration as to the accuracy and completeness of such particulars.
- c. In the present case, the importer has failed to fulfil these obligations. They have misclassified goods under multiple CTHs, despite having prior knowledge of the correct tariff classifications based on their earlier imports. This clearly demonstrates a deliberate and conscious misstatement with an intent to pay lesser duty. By such acts of omission and commission, M/s. Pur Energy Private Limited has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962, and thereby made themselves liable to penalty under Section 112(a) for improper importation of dutiable goods.
- d. 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.

#### **IX. Penalty under Section 114AA**

- a. Section 114AA penalizes any person who knowingly makes or uses false documents. The importer made false declarations of CTHs to secure lower duty rates. This constitutes use of false statements within the meaning of Section 114AA. Accordingly, penalty under Section 114AA is also justified.
- b. 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.”
- c. In the present case, it is established from the records that M/s. Pur Energy Private Limited intentionally misdeclared the classification of imported goods across multiple Bills of Entry. The importer deliberately described complete and functional machines as “parts” and certain plastic plates as “resins” in order to avail lower duty rates under incorrect CTHs. This conduct demonstrates that the importer did not make an inadvertent or technical error; rather, the misclassification was systematic, repeated, and deliberate, which squarely falls



within the ambit of "knowingly making or using false statements" as envisaged under Section 114AA.

- d. I find that M/s. Pur Energy Private Limited knowingly submitted incorrect Bills of Entry containing false CTHs and inaccurate product descriptions, thereby making and using false documents within the meaning of Section 114AA. The said acts were not borne out of negligence but were the result of deliberate suppression intended to obtain a financial advantage in the form of duty evasion. In view of the above, I hold that the importer is liable to penalty under Section 114AA of the Customs Act, 1962.

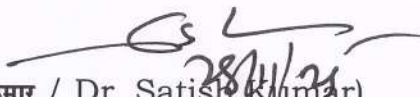
9. In view of the above discussions, I pass the following order:

#### **ORDER**

- I. I order to reject the declared classification of the imported goods namely (A) Epoxy Plates, (b) Aging Machines, (c) Automatic Spot-Welding Machines, and (d) Cell Holders, which were originally declared under various Customs Tariff Headings (CTHs) viz. 39073090, 90319000, 84682090, and 90279090 respectively and to reclassify and reassess these goods under the appropriate CTHs 39219099, 90318000, 85152110 and 39269099 respectively, as detailed in Tables A to D of the impugned Show Cause Notice, with all consequential effects.
- II. I order to confirm and recover the differential duty amounting to ₹ 8,20,328/- (Rupees Eight Lakh Twenty Thousand Three Hundred and Twenty-Eight only) from M/s. PUR ENERGY PRIVATE LIMITED under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA from the date of short-payment till the date of actual payment.
- III. I order the confiscation of the imported goods covered under Bills of Entry as listed in Tables A to D of the Show Cause Notice, having an aggregate assessable value of ₹ 2,16,18,925/- (Rupees Two Crore Sixteen Lakh Eighteen Thousand Nine Hundred Twenty-Five only), under Section 111(m) of the Customs Act, 1962 for mis-declaration of material particulars affecting duty liability. Since the goods are not physically available, I impose a redemption fine under Section 125(1) of ₹ 2,16,18,92/- (Twenty one lakhs sixty one thousands eight hundred and ninety two only) on M/s. PUR ENERGY PRIVATE LIMITED.
- IV. I impose a penalty of Rs. 8,20,328/- (Rupees Eight Lakh Twenty Thousand Three Hundred and Twenty-Eight only) and interest under Section 114A of the Customs Act, 1962.
- V. I impose a penalty of ₹ 2,16,18,92/- (Twenty one lakhs sixty one thousands eight hundred and ninety two) on M/s. PUR ENERGY PRIVATE LIMITED under Section 114AA of the Customs Act, 1962.
- VI. Since penalty has been imposed under Section 114A, no penalty is imposed under Section 112(a).



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,

M/s. PUR ENERGY PRIVATE LIMITED.,  
Principal place of business at H.No.10-38/2 SY  
No. 424/AA3KANDI VILLAGE, SANGAREDDY,  
SANGAREDDY-502 285.

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