सीमा शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V
CENTRAL ADJUDICATION CELL, NS-V
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
ताल-ऊरण,डिस्ट-राइगड़, महाराष्ट्र-४०० ७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

DIN : 20251278NX0000222A19 Date of Order: 05/12/2025

F.No. S/10-736/2024-25/ADC/Gr.VA/CAC/JNCH Date of issue: 05/12/2025

SCN No.: 1448/2024-25/ADC/Gr.VA/CAC/JNCH
SCN Date: 11/12/2024

Passed By: Shri Mazid Khan
Joint Commissioner of Customs, CAC, NS-V, JNCH

Order-In-Original No. :1273/2025-26/ADC/GR.VA/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s. ROYAL INTERNATIONAL (IEC - 594055105)

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मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि: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 2.00 रुपये मात्र का स्टांप 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 2.00 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.2.00 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. 2.00 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 THE CASE

1. On the basis of the Analytics Report 18/2021-22 dated 01/06/2021 issued by the NCTC, Mumbai, on the issue of *"wrong availment of concessional BCD rate and lower IGST rates on certain imported INVERTERS of sub-heading 8504 40"* the data pertaining to imports made under CTH 8504 carried out by the importer M/s ROYAL INTERNATIONAL through JNCH (INNSA1) was analysed in detail.

2. While analysing the data, it was observed that **M/s. ROYAL INTERNATIONAL (IEC - 594055105)** having address as **B 69/1 GROUND FLOOR, WAZIRPUR INDUSTRIAL AREA, New DELHI-110052**, had imported goods having description as " BATTERY CHARGER FOR ELECTRIC RICKSHAW , LEAD ACID BATTERY CHARGER, AMP METER FOR BATTERY CHARGER , SMALL PLASTIC FAN FOR BATTERY CHARGER" and paid IGST @ 5% as per serial no. 234B of Schedule-I of IGST levy Notification No. 01/2017 -Integrated Tax (Rate) dated 28.06.2017 (as amended by Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019). Accordingly, **SCN no.1448/2024-25/ADC/Gr.VA/CAC/JNCH dated 11.12.2024** was issued to the above importer, which inter-alia stated:

2.1 The Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8504 4090 by paying IGST @ 5% by claiming benefit of entry 234B of Schedule-I inserted vide notification 12/2019- Integrated tax (Rate) dated 31.07.2019. However, the said goods attract rate of IGST @18% from 01/08/2019(as per Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019). Therefore, the said goods were liable to be assessed at the IGST @ 18% instead of IGST @5%, which resulted in short payment of Customs duty.

2.2 The entry 234B of Schedule –I (@ 5%) or I-234 B (@ 5%) has been introduced with effect from 01.08.2019 (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019). Accordingly, certain specified goods, namely, charger or charging station for electrically operated vehicles falling under 8504 attract a lower IGST @ 5%.

IGST entry I-234 B (@5%) is reproduced below:

234 B	8504	Charger or charging station for electrically operated vehicles

2.3 Goods "other than charger or charging station for electrically operated vehicles ", falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule- III (18%), as amended by (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019).

The description of this entry is given below:

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles	18%

2.4 The total assessable value of the BE items so imported is ₹ 1518236.95 /- and it appears that a short levy of duty amounting to ₹ 237519.00/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.

Annexure-A

Sr No	BE Number/ Date	Description of Goods	Total BCD Amount-Assessed	Total Assessable Value - Assessed	Total Duty - Assessed	IGST Amount - Assessed	Cess @10%	IGST @18%	Difference in IGST
1	9130150/ 10.10.20	Battery Charger for Electric Rickshaw	136875.9	684379.35	192310.6	41747.1	13687.59	150289.71	108542.61
2	6063598/ 13.12.19	Battery Charger for Electric Rickshaw	65160	434400	96979.8	25303.8	6516	91093.68	65789.88
3	9661622/ 22.11.20	Lead Acid Battery Charger	75200	376000	105656	22936	7520	82569.6	59633.60
4	6063598/ 13.12.19	AMP Meter for Battery Charger	1954.8	13032	2909.4	759.1	195.48	2732.81	1973.71
5	6063598/ 13.12.19	Small plastic fan for Battery Charger	1563.8	10425.6	2327.5	607.3	156.38	2186.24	1578.94
								Total=	237518.74

2.5 In view of the above, **Consultative letter bearing No. 2792/2021-22 dated 23-12-2021** was issued to the importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty along with applicable interest and penalty. However, no reply or submission is given by importer in this regard.

2.6 Relevant legal provisions for recovery of duty that appears to be evaded are reproduced here for the sake of brevity which are applicable in this instant case:

2.7 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

2.8 **Section 17 (Assessment of duty)**, subsection (1) reads as:

'An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

2.9 **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

'(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 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.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing. '

2.10 **Section 46 (Entry of goods on importation)**, subsection (4) reads as:

'(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.'

2.11 **Section 111 (Confiscation of improperly imported goods etc.)** reads as:

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

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;'

2.12 **Section 112 (Penalty for improper importation of goods etc.)** reads as:

'Any person, -

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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

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

2.13 **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 a penalty equal to the duty or interest so determined.'

2.14 Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now

CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

2.15 Therefore, in view of the above facts, it appears that the importer has deliberately not paid the correct IGST by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹ 237519.00/- (as detailed in Annexure-'A'). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

2.16 Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if 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 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54.

2.17 It appears that the Importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

2.18 It further appears that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and 114A of the Customs Act. 1962.

3. In view of the above, the importer was called to show cause as to why:

3.1 The IGST rate @5% as per serial no. **234B of Schedule -I** of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017*(as amended by Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019)*, in respect of the goods discussed in Annexure-A should not be denied for the reasons stated therein and the merit IGST rate @ 18% under serial No. **375 of Schedule- III** (18%), as amended by (Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019) should not be applied.

3.2 Total Differential/short paid Duty amounting to ₹ 2,37,519 /- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' should not be demanded under Section 28(4) of the Custom Act, 1962.

3.3 In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act. 1962.

3.4 The said subject goods imported vide Bills of Entry as detailed in enclosed Annexure-'A' having assessable value of ₹ **15,18,236.95 /-** should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

3.5 Penalty should not be imposed on them under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

3.6 Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

4. PERSONAL HEARING & WRITTEN SUBMISSION

4.1 In order to comply the principal of natural justice, opportunity of personal hearing in the matter was provided to the noticee vide letter F.No. S/10-736/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH dated 24.07.2025 to appear before the adjudicating authority on 19.08.2025. The authorized representative of the importer Mr. Mohit Kalra, Advocate appeared in the personal hearing wherein he reiterated his written submission dt 19.08.2025. He further submitted that

parts of Battery charger were also declared and classified under CTH 8504 and were eligible for IGST benefit vide the Notification no 12/2019.

5. WRITTEN SUBMISSION OF THE IMPORTER

The importer submitted their written submission vide e-mail dated 19.08.2025, wherein he they interalia stated that-

5.1 That they acknowledged the receipt of SCN No. 1448/2021-25/ADC/Gr.VA/CAC/JNCH dated 09.12.2024, whereas it has been said that a consultative letter No. 2792/2021-22-12-2021 dated 23.12.2023 was issued to the Noticee but no reply has been received by the Noticee.

5.2 That the Noticee has closed the business and left the office place situated at B 69/1, Ground floor, Wazipur Industrial Area, New Delhi – 110052. Hence, the consultative letter dated 23.12.2023 has not been received by the Noticee, however recently the landlord has sent us the show cause notice. In this regard according to the objections raised in the impugned SCN dated 09.12.2024, the following submissions are as below:-

5.3 It has been communicated that the imported goods declared as "battery charger for electric rickshaw" imported vide Bill of entry No. 9130150, 6063598 and 9661622 dated 10.10.2020, 13.12.2019 and 22.11.2020 (Annexure A) respectively are not eligible for benefit under Sr. 234B of Schedule I @ 5%, of IGST Notification No. 01/2017 dated 28.06.2017 as 'charger or charging station for electrically operated vehicles'. In this regard it is submitted that we have imported battery charger for electric rickshaw. Hence, these goods are covered under Sr. 234B of Schedule I, of IGST Notification No. 01/2017 dated 28.06.2017, amended as on 01.08.2019 vide Notification No. 12/2019 dated 01.08.2019. The department has not given any reason for proposal for disallowing benefit of the Sr. 234B of Schedule I, of IGST Notification No. 01/2017 dated 28.06.2017 and classifying the same under Sr. 375 of Schedule III @18% of IGST Notification No. 12/2019-IGST dated 31.07.2019.

5.4 It is submitted that according to Section 2A of the Motor Vehicles Act of 1988, e-carts and electric rickshaw are electric vehicles which falls under Motor Vehicles Act of 1988. Section 2A of the Motor Vehicles Act of 1988 is reproduced below:-

"2A. e-cart and e-rickshaw.—(1) Save as otherwise provided in the proviso to sub-section (1) of section 7 and sub-section (10) of section 9, ***the provisions of this Act shall apply to e-cart and e-rickshaw.***

(2) For the purposes of this section, "e-cart or e-rickshaw" means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for

carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.]

Hence, the imported goods are battery charger for electric operated vehicles and correctly classified under Sr. 234B of Schedule I, of IGST Notification No. 01/2017 dated 28.06.2017.

5.5 Further in this regard it is submitted that the **demand of differential Customs duty by invoking extended period under section 28(4) of the CA, 1962 is legally unsustainable as the present issue relates to interpretation of exemption Notification and there is no collusion, willful mis-statement or suppression of facts.**

5.6 It is submitted that the demand of Differential Customs duty of Rs. 2,37,519/- under section 28(4) of the Customs Act, 1962 on the said imported goods i.e. 'Battery charger for electric vehicles' is legally unsustainable and the extended period of limitation cannot be invoked in the present case since, there is no collusion, wilful mis- statement or suppression of any fact by the Noticee as the said imported goods were correctly declared in the Bill of Entry along with the exemption claimed and the said imported goods were duly examined and cleared for home consumption by the customs department and all the facts were in knowledge of the department. Reliance in this regard is placed on the decision of the **Hon'ble Supreme Court** in the case of **Northern Plastic Ltd. Vs. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)] (Annexure- C)** wherein it was held as below:

"22. .....The declaration made by the appellant has been found to be wrong by the Collector and CEGAT on the ground that there was a separate exemption notification in respect of jumbo rolls for Cinematographic Films. While dealing with such a claim in respect of payment of customs duty we have already observed that the declaration was in the nature of a claim made on the basis of the belief entertained by the appellant and therefore, cannot be said to be a misdeclaration as contemplated by Section 111(m) of the Customs Act. As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that it had referred to the wrong exemption notification with any dishonest intention of evading proper payment of countervailing duty.

23. We, therefore, hold that the appellant had not misdeclared the imported goods either by making a wrong declaration as regards the classification

of the goods or by claiming benefit of the exemption notifications which have been found not applicable to the imported goods. We are also of the view that the declarations in the Bill of Entry were not made with any dishonest intention of evading payment of customs and countervailing duty."

5.7 Reliance is also placed on the decision of Hon'ble CESTAT, Kolkata in **Graphite India Ltd. v. Commissioner of Customs (Port), Kolkata [2015 (325) E.L.T. 777 (Tri-Kolkata)] (Annexure- D)**, wherein it has been held that ***since, the goods has been assessed to duty after allowing the benefit of exemption Notification, there cannot be an allegation of misdeclaration of imported goods or suppression of facts in claiming the benefit of exemption Notification.*** Relevant paragraph is reproduced below for ready reference:

" *8. Besides, we find force in the contention of the ld. CA that the demand notice is barred by limitation, inasmuch as the appellant had imported the goods by filing Bill of Entry No. 377676, dated 26-11-2007 and the show cause notice was issued to them under proviso of Section 28(1) of the Customs Act, 1962.* ***We find from the record that the appellant had clearly stated the description of the goods in the Bill of Entry "Electrode Grade Calcined Petroleum Coke",***

which has been assessed to duty after allowing the benefit of exemption Notification. As such, in view of judgment of the Hon'ble Supreme Court in Northern Plastic Ltd., case (supra), there cannot be an allegation of misdeclaration of imported goods or suppression of facts in claiming the benefit of exemption Notification. *In these circumstances, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law."*

5.8 Reliance in this regard is placed on the decision of the Hon'ble **Supreme Court** in the case of **Pahwa Chemicals Private Limited Vs. Commissioner of C. Ex., Delhi [2005 (189) E.L.T. 257 (S.C.)],** wherein it was held as below:

"3. .....It is only after Larger Bench held in Namtech Systems Limited v. Commissioner of Central Excise, New Delhi reported in 2000 (115) E.L.T. 238 (Tribunal) that the position has become clear. ***It is settled law that mere failure to declare does not amount to wilful mis-declaration or wilful suppression. There must be some positive act on the part of the party to establish either wilful mis-declaration or wilful suppression. When all facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no wilful mis-declaration or wilful suppression....."***

5.9 Reliance is also placed on the decision of the Hon'ble **Supreme Court** in the case of **Nestle India Ltd. Vs. Commissioner Of Central Excise, Chandigarh [2009 (235) E.L.T. 577 (S.C.)] (Annexure- E)**, wherein it has been held that extended period of limitation is applicable only when there is some positive act other than mere inaction or failure on the part of the manufacturer. The relevant portion of the said decision is reproduced below:

"17. .....Secondly, as held in the judgment of this Court in the case of Padmini Products v. Collector of C.Ex., reported in 1989 (43) E.L.T. 195, as well as in the case of Collector of Central Excise v. Chemphar Drugs & Liniments, reported in 1989 (40) E.L.T. 276, extended period of limitation is applicable only when there is some positive act other than mere inaction or failure on the part of the manufacturer. There must be conscious or deliberate withholding of information by the manufacturer to invoke larger period of limitation. ....."

5.10 Hence, it is submitted that the demand of duty under section 28(4) and imposition of penalty under Section 114A of the CA, 1962 is not sustainable since, it is a settled law that the onus is on the revenue for proving 'collusion' or suppression of facts or any wilful mis-statement by the importer, however, in the present case, the onus has not been discharged. ***There is also no allegation or evidence of collusion, wilful misstatement or suppression of facts with intent to evade duty, in the absence of which the longer period of limitation cannot be applied. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.*** Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in case of **Uniworth Textiles Ltd. Vs. Commissioner Of Central Excise, Raipur [2013 (288) E.L.T. 161 (S.C.)] (Annexure- F)**, wherein it was held as below:

"24. Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that "the appellants had not brought anything on record" to prove their claim of bona fide conduct, on the appellant. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility".

.....

26. Hence, on account of the fact that the burden of proof of proving mala fide conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, ***no specific averments find a mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant."***

5.11 Further it is submitted that mere mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form basis for confiscation of goods or imposition of penalty. Reliance in this regard is placed upon decision passed by Hon'ble CESTAT of HYDERABAD in case of **LEWEK ALTAIR SHIPPING PVT. LTD. Versus COMMISSIONER OF CUS., VIJAYAWADA2019 (366) E.L.T. 318 which is affirmed by Hon'ble Supreme Court of India in case of Commissioner vs. Lewek Altair Shipping Pvt. Ltd. 2019 (367) E.L.T. A328 (S.C.) (Annexure G)** wherein it was held that mere mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form basis for confiscation of goods or imposition of penalty. The relevant para of the above order is reproduced below:-

"7. … Even otherwise, we find it hard to hold that an assessee who filed bill of entry with a Customs Tariff Heading which is not correct, will render his goods liable to confiscation under Section 111(m). The Customs Tariff Heading indicated in the Bill of Entry is only a self-assessment by the appellant as per his understanding which is subject to re-assessment by the officers if necessary. ***Therefore, an assessee, not being an expert in the Customs law can claim a wrong tariff or an ineligible exemption notification and such claim does not make his goods liable to confiscation. Consequently no penalties are imposable under Section 112(a)"***

5.12 Reliance in this regard is also placed upon decision passed by Hon'ble CESTAT, New Delhi in case of **L.G. Electronics India Pvt. Ltd. Versus Principal Commissioner of Customs, New Delhi (2024) 15 Centax 201 (Tri.-Del) (Annexure H).** The relevant para of the order of the above case is reproduced below:-

"8. Third point of adjudication:
From the discussion on the above mentioned both the points of adjudication though it is clear that the goods have wrongly been classified by the appellant and the benefit of exemption of duty has also been wrongly claimed but we are aware that

imposition of penalty is a penal consequence of some intentional mala fide act. The onus was of the department to prove that the wrong classification was an intentional act of the appellant to wrongly claim duty exemption. Mere mention of wrong tariff or claiming benefit of an ineligible exemption notification cannot form the basis for confiscation of goods as has been held by this Tribunal in the case of Lewek Altain Shipping Pvt. Ltd. v. Commissioner of Cus., Vijayawada reported as 2019 (366) E.L.T. 318 (Tri. - Hyd.). Hon'ble Supreme Court also in an appeal against the said decision has held that mentioning of wrong tariff item or claiming benefit of ineligible exemption notification did not amount to mis-description of goods neither did it amount to making false or incorrect statement. In the present case also, we observe that the appellant is convinced of the fact that the product imported has mechanical hands and quartz movements as identical to a wrist watch and that this apparatus is also wearable on wrist. It is a clear case of misunderstanding on part of the appellant. ***Question of invoking penal provisions does not at all arise in this circumstance****. Resultantly, we decide the third point of adjudication in favour of the appellant."*

Hence, in view of the aforesaid submissions the impugned SCN issued under Section 28(4) invoking extended period for demand of differential duty and proposal of penalty under Section 112(a) and 114 A of the Customs Act, 1962 on the noticee is legally not sustainable and may be dropped.

DISCUSSION AND FINDINGS

6. I have gone through the facts of the case and material on record. I find that the Show Cause Notice proposes for demand of differential/short-paid Duty amounting to **Rs 2,37,519/- (Rupees Two Lakhs Thirty-seven Thousand Five Hundred Nineteen only)** under Section 28(4) of Customs Act, 1962 and applicable interest under Section 28AA of the Customs Act, 1962. The SCN also proposes for confiscation of the impugned goods totally valued at **Rs. 15,18,237 /- (Rupees Fifteen Lakhs Eighteen Thousand Two Hundred Thirty Seven Only)** under Section 111(m) and/or 111(o) of the Customs Act, 1962 and imposition of penalty on the importer under Section112 (a) and/or 112(b) and 114 A of the Customs Act, 1962.

7. After going through the description of the BE items under deliberation, it has been observed that, the description of imported goods mentioned in Annexure-A are **'Battery Charger for Electric Rickshaw'**, imported vide **Bills of Entry 9130150 dt. 10.10.20, 6063598 dt. 13.12.19, 'Lead Acid Battery Charger'** vide **Bill of Entry 9661622 dt. 22.11.20, 'AMP Meter for Battery Charger'** vide **Bill of Entry**

6063598 dt. 13.12.19, 'Small plastic fan for Battery Charger' vide **Bill of Entry 6063598 dt. 13.12.19**

8. I find that the description of the impugned goods, as mentioned in the said Bills of Entry are as **"Battery Charger for Electric Rickshaw, Lead Acid Battery Charger, AMP Meter for Battery Charger, Small plastic fan for Battery Charger".**

9. Now, coming to the benefit of notification no. 01/2017-IT (Rate) dated 28.06.2017 (w.e.f. 01.07.2017), I observe that the SCN has alleged that the importer has wrongly covered the goods **"Battery Charger for Electric Rickshaw, Lead Acid Battery Charger, AMP Meter for Battery Charger, Small plastic fan for Battery Charger"** by declaring lower rate of IGST under CTH 8504 and paid IGST @ 5% as per sl. no. 234B of Schedule-I of IGST levy Notification no. 01/2017-I.T. (Rate) dated 28.06.2017 (as amended by Notification no. 12/2019-I.T. (Rate) dated 31.07.2019), whereas the said goods attract IGST @18% from 01/08/2019 (as per Notification No. 12/2019-Integrated Tax (Rate) dated 31/07/2019).

9.1 I find that the entry of sl. no. 234B of Schedule-I in the IGST Notification no. 01/2017 covering the goods under CTH 8504 as "**charger or charging station for electrically operated vehicles**" with IGST @5% came into effect vide amendment Notification No. 12/2019-Central Tax (Rate) dated 31.07.2019. However, goods "**other than charger or charging station for electrically operated vehicles**", falling under heading 8504, attract a higher IGST rate @ 18% under serial No. 375 of Schedule- III (18%), as amended by above Notification No. 12/2019 - Integrated Tax (Rate) dated 31.07.2019.

9.2 The relevant Schedules of said Notification No. 12/2019 - Integrated Tax (Rate) dated 31.07.2019 are reproduced below for ease of reference:-

SCHEDULE-I with IGST @5%

234B	8504	Charger or charging station for electrically operated vehicles

SCHEDULE-III with IGST @18%

375	8504	Electrical Transformer, Static converters (for example, rectifiers) and inductors other than charger or charging station for electrically operated vehicles

10. I observe that the impugned goods i.e. **'Battery Charger for Electric Rickshaw'**, imported vide **Bills of Entry 9130150 dt. 10.10.20, 6063598 dt. 13.12.19, 'Lead Acid Battery Charger'** vide **Bill of Entry 9661622 dt. 22.11.20, 'AMP Meter for**

Battery Charger' vide **Bill of Entry 6063598 dt. 13.12.19, 'Small plastic fan for Battery Charger'** vide **Bill of Entry 6063598 dt. 13.12.19** were cleared by the importer by classifying them under Sr. No. 234B of Schedule-I of IGST Notification no. 01/2017-IT (Rate) dated 28.06.2017 (as amended by Notification no. 12/2019-I.T. (Rate) dated 31.07.2019) with applicable IGST @5%. From plain reading of the description of the impugned goods it is clear that he said goods does not cover under the category of Charger/charging station for electrically operated vehicle. The importer failed to submit any documentary proof which could establish that the impugned goods were actually charger of charging station for the electrically operated vehicle. From the description mentioned in the BOEs of Annexure A **(now placed in Table-C below)** , I observe that the "Lead Acid Battery Charger", "AMP Meter for the Battery Charger", "Small Plastic Fan for the Battery Charger" does not qualify to be called as charger or charging station for which said notification benefit was allowed during the material period. For the Bills of Entry of Annexure A **(now placed in Table-B below)** which have description of goods as "Battery Charger for Electric Rickshaw", I am of the considered view that the description matches with the goods which are eligible for the said notification. I further, observe that the department has not brought any facts to prove otherwise. Hence, I hold that the impugned goods with description **"Battery Charger for Electric Rickshaw"** were eligible for the said notification benefit and the importer has rightly paid the applicable IGST @ 5 %.

Table-B

Sr No	BE Number/ Date	Description of Goods	Total BCD Amount-Assessed	Total Assessable Value - Assessed	Total Duty - Assessed	IGST Amount - Assessed	Cess @10%	IGST @18%	Difference in IGST
1	9130150/ 10.10.20	Battery Charger for Electric Rickshaw	136875.9	684379.35	192310.6	41747.1	13687.59	150289.71	108542.61
2	6063598/ 13.12.19	Battery Charger for Electric Rickshaw	65160	434400	96979.8	25303.8	6516	91093.68	65789.88
		Total=		1118779					174332.49

10.1 I find that the importer has declared the impugned goods under CTH 8504 and the same is not under dispute in the subject SCN. From the above discussion, it is amply clear that the impugned goods classified under CTH 8504, by the importer, will attract IGST @18%, therefore, I am of the considered view that the impugned

goods **"Lead Acid Battery Charger, AMP Meter for Battery Charger, Small plastic fan for Battery Charger"** imported under CTH 8504 will attract IGST @18%, however, the importer has deliberately not paid the correct duty by willful misstatement.

Table-C

Sr No	BE Number/ Date	Description of Goods	Total BCD Amount-Assessed	Total Assessable Value - Assessed	Total Duty - Assessed	IGST Amount - Assessed	Cess @10%	IGST @18%	Difference in IGST
1	9661622/ 22.11.20	Lead Acid Battery Charger	75200	376000	105656	22936	7520	82569.6	59633.60
2	6063598/ 13.12.19	AMP Meter for Battery Charger	1954.8	13032	2909.4	759.1	195.48	2732.81	1973.71
3	6063598/ 13.12.19	Small plastic fan for Battery Charger	1563.8	10425.6	2327.5	607.3	156.38	2186.24	1578.94
		Total		399458					63186

11. In view of the above, I hold that the impugned goods **"Lead Acid Battery Charger, AMP Meter for Battery Charger, Small plastic fan for Battery Charger"** are rightly classifiable under CTH 8504 with higher rate of IGST 18%, as per serial No. 375 of Schedule-III of Notfn. No. 12/2019- Integrated Tax (Rate) dated 31.07.2019.

12. I find that, after the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty and/ or description of goods. The relevant sections of Customs Act are reproduced below for ease of reference:-

12.1 **Section 17(1) Assessment of duty**, reads as:

An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

12.2 Further **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

'(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 willful 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 beenso 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.

13. Thus, from material facts of the case, it is evident that the said importer, purportedly mis-classified the impugned goods with the intent to pay lower IGST and thereby caused loss to the govt. exchequer. The said act of the importer is nothing but willful mis-statement with clear mens rea to pay lower duty at material time. By doing so, the importer evaded a total duty of **Rs 63186/- (Rupees Sixty-three Thousand One Hundred Eighty-six only),** as detailed in **Table-C** above. Thus I hold that the demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable and I hold the same.

14. Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.

15. As I have already hold that the demand of duty for extended period under Section 28(4) of Customs Act, 1962 is sustainable in the case, I observe that the importer is liable for penal action under Section 114A of the Customs Act, 1962 and I hold the same.

16. I find that, on the basis of the facts and circumstances mentioned herein above, the importer has knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to the Sr. No./Schedule of the relevant notification, with an intent to evade the applicable duty. Thus, I am of considered view that by their aforesaid acts of omission and commission, the impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and I hold the same. However, I find the goods imported vide bills of entry as detailed above are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

"23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under

Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."

17. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

18. Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 112(a) and/or 112(b) and 114A of the Customs Act, 1962 on the importer. In this regard, I find that the importer has wrongly evaded legitimate customs duty. I find that, in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. In the instant case wrongly availed the benefits of IGST notification by the importer of such repute

having access to all legal aid, tantamount to suppression of material facts and willful mis-classification. The "mens rea" can be deciphered only from "actus-reus". Thus, providing the suppression of fact and claiming undue benefit by the said Importer taking a chance to clear the goods by misclassifying it, amply points towards their "mens rea" to evade the payment of duty. Thus, I find the Importer is liable for a penalty under Section 114A of the Customs Act, 1962.

19. In view of the above facts, I pass the following order.

ORDER

(i) I reject the benefit of lower rate of IGST @5% availed by the importer **M/s. ROYAL INTERNATIONAL** and order to re-assess the Bills of Entry under Sr. No.375 of Schedule III (IGST @18%) of Notification No. 01/2017 dated 28.06.2017, for goods imported vide Bill of Entry mentioned in Table-C.

(ii) I order to confirm the demand of differential IGST of **₹ 63186/- (Rupees Sixty-three Thousand One Hundred Eighty-six only)** on the goods imported vide above Bills of Entry of Table-C, under Section 28(4) of Customs Act, 1962

(iii) I order to recover applicable interest on the differential/short-paid duty as confirmed in para 19(ii) above from the importer **M/s. ROYAL INTERNATIONAL** under Section 28AA of the Customs Act, 1962.

(iv) I order to confiscate the impugned goods having assessable value of **₹ 399458 /- (Rupees Three Lakhs Ninety-nine Thousand Four Hundred Fifty Eight Only)** under Section 111(m) of the Customs Act, 1962, but since the same are not available as they have already been cleared, hence I impose a redemption fine of **₹40,000/- (Rupees Forty Thousand only)** under Section 125 of the Customs Act, 1962 upon the above importer.

(iv) I order to impose penalty of **₹ 63186/- (Rupees Sixty-three Thousand One Hundred Eighty-six only) (equivalent to differential duty) (as confirmed in Para 19(ii) above) plus interest leviable thereon**, on the above importer, under Section 114A of Customs Act, 1962. If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be 25% of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

(v) I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962.

20. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force.

05/12/24

(माजिद खान / MAZID KHAN)
संयुक्त आयुक्त सीमा शुल्क/ JT. COMMISSIONER OF CUSTOMS
सीएसी, एनएस-5, जेएनसीएच/ CAC, NS-V, JNCH

To:

M/s. ROYAL INTERNATIONAL (IEC - 594055105)
B 69/1 GROUND FLOOR,
WAZIRPUR INDUSTRIAL AREA,
New DELHI-110052

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 VA, JNCH.
4. The Dy. Commissioner of Customs, Circle- E2, Audit, JNCH
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