	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 : 20250778NX0000222ECC — Date of Order: 23/07/2025

F.No. S/10-331/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH — Date of issue: 23/07/2025

SCN No.: 785/2024-25/ADC/Gr.VA/CAC/JNCH
SCN Date: 24/07/2024

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

Order-In-Original No. : 541/2025-26/JC/GR.VA/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s. HULIKKAL ELECTRO (INDIA) PVT. LTD. (IEC-3212012561)

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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 Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), on the issue of "Short Levy of Customs Duty by way of clearance of goods covered under CTH 8507 at lower rate of IGST" and by way of claiming incorrect Schedule and Serial number of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, data pertaining to imports made by various importers through JNCH (INNSA1) during 01.07.2017 to 13.11.2019 was analysed in detail.

2. While analyzing, it was observed that **M/s. HULIKKAL ELECTRO (INDIA) PVT LTD (IEC-3212012561)** having address as **GROUND FLOOR, OLD NO.8A, NEW NO.9, CAPTAIN PALANISWAMY LAYOUT, RS PURAM, COIMBATORE, TAMIL NADU-641002** had imported goods having description as "Battery" under the aforestated CTH as detailed in Annexure- 'A'. The imported goods attract IGST @ 28% under sl. no. 139 of Schedule IV. Accordingly SCN No. 785/2024-25/ADC/Gr.VA/CAC/JNCH dated 24.07.2024 was issued to the said importer, which inter-alia stated that:

2.1 The Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8507 attract levy of IGST as per Table-A. However, they have been cleared under lower rate of IGST.

Table-A

Notification No.	Schedule / S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	IGST Rate
01/2017-Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	IV / 139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than **[Lithium-ion batteries]**[1] and **[Lithium-ion accumulators (other than battery) including Lithium-ion power bank]**[2]. 1. Inserted by Ntfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Ntfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.	28%
19/2018-IT (Rate) dt. 26.07.18 w.e.f. 27.07.18	III / 376AA	8507 60 00	Lithium-ion Batteries	18%
25/2018-IT (Rate) dt. 30.12.18 w.e.f.	III / 376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank	18%

01.01.19				
01/2017-Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	II / 203	85	Part for manufacture of telephones for cellular networks or for other wireless networks	12%

2.2 Consequent upon the above notifications, it is amply clear that imported goods attract Sl. No. 139 of Schedule IV (IV-139) levying IGST rate of 28% for the CTH 8507 i.e. Electric accumulators, including separators therefor, whether or not rectangular (including square). Further, Sl. No. 203 of Schedule II (II-203 of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 levying IGST rate of 12% for the CTH 85 i.e. Parts for manufacture of telephones for cellular networks or for other wireless networks, Sl. No. 376AA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 85076000 i.e. Lithium-ion Batteries & Sl. No. 376AAA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 levying IGST rate of 18% for the CTH 8507 i.e. Lithium-ion accumulators (other than battery) including lithium-ion power bank Lithium-ion accumulators (other than battery) including lithium-ion power bank are not applicable to the imported goods. The importer has imported goods having description as Battery. After going through the description of the BE items under deliberation, it has been observed that the imported goods appears to attract IGST @28% against sr. no. 139 of Schedule IV of notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and does not seem to justify clearance claiming a lower IGST rate @12% under sr. nos. 203 of Schedule II of IGST notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017 and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018-Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule.

2.3 On scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @ 12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods falling under CTH 8507 are to be correctly covered under Sl. No. 139 of Schedule IV of the IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and attract higher rate of IGST @28%.

2.4 The total assessable value of the BE items so imported is ₹ 25,74,895.31/- and it appears that a short levy of IGST amounting to ₹ 2,85,813.36/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.

2.5 In view of the above, **Consultative letter No.4787** was issued to 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 alongwith applicable interest and penalty. However, as per available records, 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:

(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;'*

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 duty 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 ₹ 285813.36/- (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(m) 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.

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) 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, **M/s. HULIKKAL ELECTRO (INDIA) PVT LTD (IEC- 3212012561)** was called to show cause, as to why:

(i) The declared IGST under Sl. No. 203 of Schedule II and/or Sl. Nos. 376AA or 376AAA of Schedule III of IGST Notification No. 01/2017-Integrated Tax (Rate) dated

28.06.2017 should not be rejected and re-determined under Sl. No. 139 of Schedule IV of the said IGST Notification.

(ii) Differential/short paid Duty amounting to **₹ 2,85,813.36/-** 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.

(iii) 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.

(iv) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of **₹ 25,74,895.31/-** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(v) 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.

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

RECORDS OF PERSONAL HEARING

4. In order to comply the principal of natural justice, opportunities for personal hearing in the matter was provided to the importer on 12.06.2025 on virtual mode vide letter F.No. S/10-331/2024-25/ADC/Gr.VA/CAC/JNCH dated 27.05.2025, however, no one attended the said personal hearing.

4.1 The importer was provided another opportunity of personal hearing on 25.06.2025, in response to which the authorized representative of the importer vide e-mail dated 25.06.2025 informed that he is held up before the Hon'ble High Court of Madras (Madurai Bench) for an Admission and was not in a position to attend the said hearing and requested for adjournment of the personal hearing to any other date preferably after 4 weeks.

4.2 The importer was provided another opportunity of personal hearing on 09.07.2025, in response to which the authorized representative of the importer vide e-mail dated 09.07.2025 informed that he was not well and was not in a position to attend the said hearing and again requested for adjournment of the personal hearing to any other date preferably after 4 weeks.

4.3 The adjudicating authority granted last opportunity of personal hearing to the importer on 14.07.2025, in response to which the authorized representative vide e-mail dated 11.07.2025 informed that he was undergoing treatment and was admitted to the hospital and was not in a position to attend the said hearing and requested for one last adjournment to next Friday. Vide the above e-mail, the authorized representative submitted his medical reports for consideration of his request for adjournment.

4.4 Considering the request of the importer, the adjudicating authority granted personal hearing on 18.07.2025, which was attended by Shri (Dr.) S. Krishnanandh, Advocate and authorized representative of the importer, who reiterated his written submission dated 14.07.2025 and requested to grant two days' time to submit his additional written submission in the matter..

WRITTEN SUBMISSIONS OF THE IMPORTER

5. The above authorized representative of the importer vide e-mail dated 14.07.2025 submitted their reply to the Show Cause Notice, to be placed before the adjudicating authority, wherein they inter-alia stated that:

5.1 At the outset the noticees submit that the entire Show cause notice is barred by the limitation, in as much as the Bill of Entry impugned in the Show cause notice is 4341662 dated 02.08.2019 and the present Show cause notice has been issued on 24.07.2024. However, perusal of the Show cause notice indicates that the same invokes the larger period of limitation in terms of section 28(4) of the Customs Act, 1962. It is by now settled law that in so far as the question of interpretation and claim of any notification benefit, the larger period of limitation cannot be invoked. In support of the above contention the noticees seek to place reliance on the following Judgment/Orders of the Hon'ble Supreme Court as well as the Tribunal Courts that in matters of claim of benefit of notification the larger period of limitation is not invokable:-

i. Collector of Central Excise Vs. Chemphar Drugs & Liniments reported in 1989 (40) ELT 276 (S.C.)

ii. Cotton Productions of India Vs. Collector of Central Excise, Jaipur reported in 1998 (98) ELT 100 (Tribunal)

iii. Virlon Textiles Mills Ltd., Vs. Commissioner of Central Excise, Mumbai reported in 2003 (158) ELT 469 (Tri.-Mumbai)

iv. Virlon Textiles Mills Ltd., Vs. Commissioner as affirmed by the Hon'ble Supreme Court and reported in 2004 (167) ELT A29 (S.C.)

v. Pushpa International Vs. Commissioner reported in 2005 (180) ELT A48 (S.C.)

5.2 The noticees submit that the above referred Judgments are squarely applicable to the facts of the instance case and purported claiming of an ineligible notification, is utterly misplaced more particularly because of invocation of the larger period of limitation and the entire proposal in the Show cause notice deserves to be dropped on this ground alone.

5.3 The noticees with a great sense responsibility submit, despite the settled position of law with regard to claim of benefit of notification, either prior to the GST regime or subsequent to the introduction of the GST regime, the position of law remains the same and is well settled and the very issuance of the Show cause notice in question is a sheer abuse of process and deserves to be discarded in its entirety and so also the allegations levelled therein.

5.4 Perusal of the Show cause notice would indicate that it clearly alleges wrong claim of notification in so far as it concerns payment of alleged "Lower Rate of IGST", and also invokes sections 17, 28(4). 46, 111, 112 and 114A of the Customs Act, 1962. The above proposal, stems from a purported alert circular No.11/2009 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-1. The noticees submit that they have not been furnished with a copy of the said alert circular so as to understand and respond appropriately to the Show cause notice. Under the said circumstances the noticees request for a copy of the said alter circular, to substantiate their defense.

5.5 The noticees submit that having invoked the provisions of section 17(1) of the Customs Act, 1962, pertaining to self-assessment. It is submitted that both the audit department as well as the author of the Show cause notice have lost site of section 17[2] and 17[4] of the Customs Act, 1962, wherein the Proper Officer of Customs is duty bound to verify a self-assessment by the importer or exporter as the case may be. However, the Show cause notice reveals that the provisions of section 28[4] of the Act ibid has been invoked [larger period of limitation] which is applicable only in cases of (a) collusion; or (b)any wilful misstatement; or (c) suppression of facts. Perusal of the entire Show cause notice does not allege any of the three pre-requisites for invocation of section 28[4] of the Customs Act, 1962 and therefore, the very invocation of the said section is utterly baseless and illegal and deserves to be dropped in its entirety. Be that as it may, if the contention of the department that there was a short levy with respect to the IGST claim in the Show cause notice, at worst the department could have only invoked section 28[1] of the Customs Act, 1962 and not section 28[4] of the Act ibid and the time period for invocation of section 28[1] of the Customs Act, 1962, ought to have issued the present Show cause notice within a period of 2 years from eh date of filing of the Bill of Entry. This submission is being made, without prejudice to the contention the provisions of section 28 are not attracted in the instance case and it is the failure on the part of the proper officer of customs not to have verified the correctness of the declarations made the benefit of notification claimed in the Bill of Entry impugned in the Show cause notice and for such failure on the part of the Proper Officer of Customs, the department is estopped from invoking the larger period of limitation under section 28[4] of the Customs Act, 1962. Useful reference may be used to the Judgment the Hon'ble High Court of Punjab, Haryana at Chandigarh, to the case of Commissioner of Customs, Amritsar VS. Jyoti Industries reported in 2007 [209] ELT 180 [P & H], wherein the Hon'ble High Court had categorically held that for mistake in assessment on the part of the Officer of Customs, the department cannot invoke the larger period of limitation and on this score also, the very proposal in the Show cause notice is perse whimsical, illegal and arbitrary and deserves to be dropped in its entirety with consequential relief to the noticees.

5.6 The noticees submit that they are uphold that the Show cause notice proposes confiscation of the goods that are not available for confiscation, despite the settled position of law in the case of Commissioner of Customs (Import), Mumbai Vs. Finesse Creation INC. reported in 2009 [248] ELT 122 [Bom.] as affirmed by the Hon'ble Supreme Court and reported in 2010 (255) ELT A120(S.C.). The noticees submit that what came up for consideration before the Hon'ble of Court of Bombay in the above referred case was:-

> *(a) Whether the goods held to be improperly imported are liable for confiscation under Section 111 of the Customs Act, 1962, even though the same are cleared and not available for seizure?*
>
> *(b) Whether on the facts and the circumstance of the case the Hon'ble CESTAT is correct in law in holding that since the imported goods were not available as being already cleared, the same was not liable for confiscation?*

And the said questions were answered as under:-

> ***5.*** *In our opinion, the concept of redemption fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. Under Section 125 a power is conferred on the Customs Authorities in case import of goods becoming prohibited on account of breach of the provisions of the Act, rules or notification, to order confiscation of the goods with a discretion in the authorities on passing the order of confiscation, to release the goods on payment of redemption fine. Such an order can only be passed if the goods are available, for redemption. The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.*

5.7 It is submitted that the above Judgment and answerers to the question raised in the writ petition before the Hon'ble High Court of Bombay were affirmed and approved by the Hon'ble Supreme Court and under Article 141 of the Constitution of India, the same is the law of the land and the present Show cause notice having been issued contrary to the above referred Judgments is not only an abuse of the Quasi Judicial process but also contemptuous in nature, more particularly because the Judgment/Order of the Hon'ble Supreme Court had affirmed, the Judgment/Order of the Jurisdictional High Court of Bombay, which was binding on the Adjudicating Authority, responsible for issuing the Show cause notice as well as the officers attached to the Audit Commissionerate, on whose instance, the present Show cause notice has come to be issue, calling upon the noticees to the answer to the same. The noticees stop short of a request either of the withdrawal of the Show cause notice or dropping of all charges levelled therein, failing which we as their counsel have their fullest instructions to proceed in a manner known to law including initiating contempt proceedings against the Officers attached the Audit Commissionerate as well as the author of the Show cause notice, in the event, the proceedings are not dropped or the Show cause notice is not withdrawn under intimation to the noticees and us as their counsel.

5.8 **The** notices submit that admittedly the author of the Show cause notice does not appear to have even the rudimentary knowledge of the Customs Law, in so far as it pertains to imposition of penalty under sections 112(a) or 114A of the Customs Act, 1962. Perusal of the proviso to section 114A, clearly stipulates that propositions of both the penalties or imposition of both the penalties cannot be invoked simultaneously, as the same are either or or and are not invokable together not can the penalties under the said sections, be imposed together. Without prejudice to the said contention it is submitted that the very invocation of the said two sections for imposition of penalty, are perse contrary to the statutory provisions and deserves to be dropped in their entirety and the persons responsible for drafting and issuing such a Show cause notice, including the author of the Show cause notice, without any application of mind, deserves severe castigation for being opposed to law.

5.9 Without prejudice to all the contention raised herein above, it appears from a plain reading of the Show cause notice that the same has been issued on the basis of the so-called Alert Circular referred to herein above a copy of which has been sought for by the noticees. The noticees also submit that the very fact that the benefit of the notification claimed by them was allows and the goods permitted to be cleared by the allowing the said benefit of the notification itself would ipso facto prove that there was nothing amiss in the claim of the said notification. However, as the Show cause notice avers to the contrary, the noticee seek for cross examination of the officers, responsible for clearance of the goods, extending the benefit of the notification claimed, to ascertain, whether the claim was genuine and correct or otherwise, in light of the allegations in the Show cause notice.

5.10 The noticees seek to place reliance on the following Judgments in support of their request of the cross examination:-

(i) Ayaaubkhan Noorkhan Pathan Vs. State of Maharastra reported in (2013) 4 SCC 465.

(ii) Vulcan Industrial Engineering Co.Ltd. Vs. Union of India reported in 2013 (297) ELT 190 (Guj.)

(iii) Veetrag Enterprises Vs. Commissioner of Customs (Seaport Exports), Chennai reported in 2015 (330) ELT 74 (Mad.)

5.11 The noticees submit that the Judgments referred to the preceding paragraph, categorically hold that cross examination is a part and parcel of the Principles of Natural Justice and the Hon'ble High Court of Gujarat, in its Judgment has held that wherever, during the course of adjudication, request for cross examination is made, the same shall be dealt as a preliminary issue, prior to passing of any final orders in adjudication, to enable the noticees to challenge the denial of cross examination if any, in a manner known to law.

5.12 The noticees submit on receipt of the Alert Circular, movement of the Bill of Entry impugned in the Show cause notice in the EDI system, to prove that the impugned

Bill of Entry was not self-assessed under section 17[1] of the Customs Act, 1962, but duly verified for the correctness of the declarations made under section 17[2] of the Customs Act, 1962 and on conclusion of the cross examination requested for the noticees shall submit a detail statement of defense, pursuant to which they may be afforded an opportunity of personal hearing in the matter.

6. The importer vide e-mail dated 19.07.2025 submitted their additional written submission, which inter-alia stated :

6.1 That they are engaged in the business of manufacturing electric cycles / e-bikes and its parts in Coimbatore, Tamil Nadu since 2012.

6.2 That they have imported 375 sets of "Lithium-ion batteries" vide BOE 4341662 Dated 02/08/2019. These batteries are fixed at the down tube of the e-bike - down tube is the tube running from the head pipe near handle bar to the BB Shell near the pedals. Also the Voltage platform of the e-bike is 48V and the capacity of the battery pack is 7.5 Ah. Hence the description of goods read - "Lithium Ion Battery (LIB) 48V 7.5Ah Downtube Pack (E-Bike Spare Parts).

6.3 That the dispute mentioned in the SCN pertains to IGST rate of 18% for the goods - "Lithium Ion Battery (LIB) -48V 7.5 AH, Downtube Pack", which were cleared by us under CTH 8507 6000, by availing IGST Notification No.001 of 2017-111/376AA and admittedly the rate of IGST applicable on the said goods is 18%, which is rightly done so, and which stood discharged by us at the time of clearance of goods imported vide the above referred Bill of Entry.

6.4 That they have attached the BOE copy 4341662 with the examination order, the photo of the e-bike with the Lithium-ion Battery pack, purchase invoice, their sales invoice of the said goods to their customer along with their written submission, as further evidence of the same.

6.5 That they are incorporated as a Private Limited Company and are registered with the GST Department at Coimbatore, Tamil Nadu, as manufacturers and importer of parts/ spare parts for manufacture of E-Bikes through various ports in India. In the said context, we seek to place reliance on two Bills of Entry Nos. 2542142 dated 28.01.2021 imported through Chennai Port and 3222193 dated 20.03.2021, imported through IGI Airport, New Delhi, wherein the Customs Authorities at the respective ports have assessed the very same goods imported by us under the very same classification and at the very same rate of duty. This is further supporting evidence that the goods imported and cleared via the BOE 4341662 thru Nhava Sheva Port are rightly done so in all respects.

6.6 They requested that the SCN be withdrawn and the allegations levelled therein be dropped.

DISCUSSION AND FINDINGS

7. I have gone through the facts of the case, material on record and written & oral submissions of the said importer. I find that the Show Cause Notice proposes a recovery of differential IGST amounting to **₹ 2,85,813.36/- rounded off to ₹ 2,85,813/- (Rupees Two Lakh Eighty-five Thousand Eight Hundred and Thirteen only)** under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The Show Cause Notice also proposes imposition of penalty on the importer under Section 112(a) and 114A of the Customs Act, 1962 and confiscation of impugned goods under Section 111(m) of the Customs Act, 1962 of subject imported goods totally valued at **₹ 25,74,895.31/- (Rupees Twenty-five Lakh Seventy-four Thousand Six Hundred Sixty-six and Forty-nine Paisa only)**.

8. I find that the description of the impugned goods in the body of the impugned Show Cause Notice is mentioned as "Battery", whereas, the description in Annexure- 'A' attached to the impugned Show Cause Notice is **"LITHIUM ION BATTERY".** The description of the imported goods and CTH are verified from ICES and have been found same as mentioned in Annexure- 'A' attached to the impugned Show Cause Notice. I find that the SCN has not contested the classification of the subject imported goods i.e. Lithium Ion Battery under CTI 85076000. Hence, it is clear that the imported goods are Lithium-ion Battery under CTI 85076000.

9. Now, coming to the benefit of notification no. 01/2017-IT(Rate) dated 28.06.2017 (w.e.f. 01.07.2017), which the SCN alleged to, have been availed by the importer. I observe that the SCN has alleged that the importer has wrongly covered the goods i.e. Battery by declaring lower rate of IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule and proposed to classify the same under Sl. No. 139 of Schedule IV having applicable IGST @ 28%.

9.1 I find that vide principal Notification No. 01/2017-IT (Rate) dated 28.06.2017 (w.e.f. 01.07.2017) "**Electric Accumulators, including separators therefor, whether or not rectangular (including square) other than (Lithium-ion batteries) accumulators and (Lithium-ion) other than battery including Lithium-ion power bank**" falls under Schedule-IV Sr. No. 139 with applicable IGST@28%, however, after amendment in the said notification vide Notification No. 19/2018-IT (Rate) dated 26.07.2018 "**Lithium-ion battery**" falls under **Sr. No. 376AA** of **Schedule-III** with applicable IGST @18%. Vide further amendment in the principal notification vide notification no. 25/2018-IT(Rate) dated 30.12.2018 (w.e.f. 01.01.2019) **Lithium-ion accumulators (other than battery) including lithium-ion power bank** falls under **Sr. no. 376AAA** of **Schedule III** with applicable IGST@18%.

9.2 The relevant part of said notification dt. 28.06.2017 of IGST and its subsequent amendment are reproduced below for ease of reference:-

Notification No.	Schedule / S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	IGST Rate
01/2017- Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	IV / 139	8507	Electric accumulators, including separators therefor, whether or not rectangular (including square) other than **[Lithium-ion batteries]**[1] and **[Lithium-ion accumulators (other than battery) including Lithium-ion power bank]**[2]. 1. Inserted by Ntfn. 19/2018-IT (Rate) dated 26.07.2018 w.e.f. 27.07.2018. 2. Inserted by Ntfn. 25/2018-IT (Rate) dated 31.12.2018 w.e.f. 01.01.2019.	28%
19/2018-IT (Rate) dt. 26.07.18 w.e.f. 27.07.18	III / 376AA	8507 60 00	Lithium-ion Batteries	18%
25/2018-IT (Rate) dt. 30.12.18 w.e.f. 01.01.19	III / 376AAA	8507	Lithium-ion accumulators (other than battery) including lithium-ion power bank	18%
01/2017- Integrated Tax (Rate) dated 28.06.2017 w.e.f. 01.07.2017	II / 203	85	Part for manufacture of telephones for cellular networks or for other wireless networks	12%

9.3 I observe that the impugned goods i.e. "**LITHIUM ION BATTERY**", imported vide Bill of Entry no 4341662 dt. 02.08.2019 was cleared by the importer by classifying them under Sr. No. 376AA of Schedule-III of IGST Notification no. 01/2017-IT (Rate) dated 28.06.2017 and paid IGST @18%. The importer, vide their written submission dated 19.07.2025 has submitted that they had imported Lithium-ion Battery for manufacturing electric cycle/e-bike under HSN code 85076000 and paid IGST @18% under Sr. No. 376AA of the Notification 01/2017-IT(Rate) dtd 28.06.2017 as amended.

9.4 I observe that vide Notification No. 01/2017-IT(Rate) dated 28.06.2017 as amended by Notification no. 19/2018-IT(Rate) dt, 26.07.2018 (w.e.f. 27.07.2018) **Lithium-ion Batteries** falls under Sr. no. 376AA of Schedule III with IGST @18%.

9.5 Hence, as discussed in the preceding paras, I consider the impugned goods as lithium ion batteries and since the impugned goods were imported vide B/E no 4341662 dt. 02.08.2019 i.e. after 27.07.2018, I hold that the impugned goods are rightly classified under Sr. no. 376AA of Schedule III of Notification No. 01/2017-IT(Rate) dated 28.06.2017 as amended by Notification no. 19/2018-IT(Rate) dt, 26.07.2018 (w.e.f. 27.07.2018) with IGST @18%.

9.6 Further, the importer has since paid IGST @18% for the impugned goods by classifying them under Sr. No. 376AA of Schedule-III of notification no. 01/2017-IT (Rate) as amended, I hold that the importer has rightly paid differential IGST @18% for import of impugned goods vide B/E no 4341662 dt. 02.08.2019. Hence, I drop the demand of differential IGST raised in the SCN against the importer.

10. As discussed in the preceding paras, since there is no liability of differential IGST to be paid by the importer in the subject matter, the question of interest on differential duty, confiscation of the impugned goods and imposition of penalty on the importer do not arise. Hence, I drop the same.

11. In view of the discussion above, I pass the following order.

ORDER

I drop all the charges levelled against **M/s. HULIKKAL ELECTRO (INDIA) PVT LTD (IEC-3212012561)** vide Show Cause Notice No. 785/2024-25/ADC/Gr.VA/CAC/JNCH dated 24.07.2024.

12. 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 in the Republic of India.

Encl: Annexure –A

23.07.25

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

To:

M/s. HULIKKAL ELECTRO (INDIA) PVT LTD
Ground Floor, Old No.8a, New No.9, Captain Palaniswamy Layout,
R.S. Puram, Coimbatore, Tamil Nadu-641002

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. /Asstt. Commissioner of Customs, AUDIT, Circle E, JNCH
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH…………..for uploading on website.
6. Notice Board (CHS Section), JNCH.
7. Office Copy.

Annexure-A

Sr. No	IEC Name	BE Number	BE Date	CTH	Item Description	Total Assessable Value - Assessed	Total Duty - Assessed	IGST Amount - Assessed	IGST Amount - Foregone Assessed	IGST Assessable Value - Assessed	IGST PAID RATE	IGST APPLICABLE RATE	IGST SHORT PAID
1	HULIKKAL ELECTRO (INDIA) PVT LTD	4341662	02/08/2019	8507	LITHIUM LON BATTERY (LIB)-48V 7.5AH DOWNTUBE PACK (375 SET)(E-BIKE SPARE PARTS)	2574895.31	797702.6	514464.1	0	2858133.79	18	28	285813.36
	HULIKKAL ELECTRO (INDIA) PVT LTD Total					2574895.31		514464.1	0	2858133.79			285813.36

14/02/24