



सीमाशुल्कआयुक्तकाकार्यालय,(एन.एस.-I),
OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-I),
न्हावा-शेवा,जवाहरलालनेहरूसीमाशुल्कभवन,
NHAVA-SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE,
ता. उरण,जिला-रायगड,महाराष्ट्र-400707
TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA - 400 707.

F. No. S/10-754/24-25/JC/Gr IIG /NS-I/CAC/JNCH

Date of order: 09.10.2025

SCN No.-1535 /2024-25/JC/Gr.II(G)/CAC/JNCH

Date of issue: 10.10.2025

Dated: 31.12.2024

Passed by: Dr. Parul Singhal
Joint Commissioner of Customs (NS-I)
Gr. IIG, JNCH, Nhava Sheva

Order No. 945 /2025-26/JC/Gr.IIG/NS-I/CAC/JNCH

DIN. No. 202510 78NW 0000565918

Name of Party/Noticee/Importer: M/s. Suraj Enterprises (AEWPK5382B)

मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- इसआदेश के विरुद्धअपील सीमाशुल्क अधिनियम1962 की धारा 128(1) के तहत इसआदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्कआयुक्त(अपील), जवाहरलालनेहरूसीमाशुल्कभवन, शेवा, ता. उरण, जिला- रायगड, महाराष्ट्र-400707 को की जा सकती है।अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 केअनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए।अपील पर न्यायालय फीस के रूप में 1.50 रुपये मात्र का स्टॉप लगाया जायेगाऔर साथ में यहआदेश 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 स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीसअधिनियम1970 कीअनुसूची1, मद6 केअंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्धअपील करने वाला 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

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, 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.
- 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

M/s. Suraj Enterprises (AEWPK5382B) having address at 1st Floor-2415, Teliwara, Sadar Bazar, North Delhi, Delhi-110006 had imported items viz. "Pouch" etc.(hereinafter referred to as 'the subject goods') vide Bills of Entry as mentioned in Table - A, classifying the same under CTH 3926 and the same were cleared through Customs.

2. During the course of Post Clearance Audit Bill of Entry, it was prima-facie noticed that the Importer had imported the goods as mentioned in Table-A and paid IGST@12% under serial number 81 of Schedule-II of Notification No.01/2017-integrated Tax (Rate) dated 28.06.2017. The details of description of goods, Bill of Entry, assessed IGST amount were as per Table-A given below.

3. After going through imported goods description, IGST Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) & Notification43/2017-IT rate dated 14.11.2017 (as amended), it appeared that the imported goods would fall under Sl. No.111 of Schedule III wherein applicable IGST rate@ 18% instead of Sl. No. 81 of Schedule-II wherein applicable IGST rate @ 12%. However, importer paid IGST rate@12% as per Sl. No. 81 of Notification No.01/2017 against the imported goods. For better appreciation, the relevant part of Notification 01/2017 was as below:

IGST Schedule	Schedule Sr.No.	IGST rate	Description of goods
II	81	12%	FeedingBottles
II	82	12%	PlasticBeads
III	111	18%	(Other articles of plastics and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles)

4. Since, the applicability of IGST@ 18% as per Sr.No.111of Schedule-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 on "Other articles of plastics and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles" was very clear and specific, it appeared that the Importer had wilfully made short payment of IGST by wrong availment of IGST Schedule against imported goods, thereby paying lower duty than applicable and thus the provisions of Section 28(4) were invokable in the case.

5. Accordingly, a Consultative Letter No.3450/2021-22/C1/2021-22/C1 vide F. No. S/2-Audit-Gen-283/2021-22/JNCH /C1 dated 07.03.2022 was

issued to the Importer for payment of short levied duty along with applicable interest and penalty. Vide the aforementioned Consultative letter, the Importer was advised to pay the Differential IGST (details mentioned in below TABLE-A) along with interest and penalty in terms of Section 28(4) of the Customs Act 1962. The Importer was further advised to avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962, by early payment of short paid IGST duty and interest along with penalty @ 15%. The Consultation letter was issued taking into account the Pre-Notice Consultation Regulations, 2018. However, the Importer did not respond.

TABLE-A

BENo.	BEDate	Item No.	Description	Assessable Value	IGST Amount 12%(Paid)	IGST Amount 18%	Diff. IGST.(Recoverable)
6409613	09.01.2020	1	Pouch	209304.1	29260.7	43891.05	14630.35
6409193	09.01.2020	1	Pouch	474065.8	66274.4	99411.6	33137.2
6408625	09.01.2020	1	Pouch	346726.6	48472.4	72708.6	24236.2
6408624	09.01.2020	1	Pouch	480905.7	67230.6	100845.9	33615.3
							105619

6. Acts of omission and commission by the Importer:

6.1 As per section 17(1) of the Act, “An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.”Thus, in this case the Importer had self-assessed the Bills of Entry and appears to have Short levy of IGST by way of wrong availment of IGST Schedule. As the Importer got monetary benefit due to said act, it was apparent that the Importer deliberately made short payment of IGST by wrong availment of IGST Schedule against said goods in the Bills of Entry during self-assessment. Therefore, differential duty was recoverable from the Importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act.

6.2 It appeared that the Importer had given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable IGST rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared that the Importer had submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appeared that the Importer had rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appeared liable to penal

action under Section 112(a) and/or 114A of the Customs Act, 1962.

7. From the foregoing, it appeared that the Importer had wilfully made short payment of IGST against the import goods; that the Importer had submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of Importer, there had been loss to the government exchequer equal to the differential duty.

8. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s. SURAJ ENTERPRISES (AEWPK5382B) was called upon to show cause as to why:

- i. The IGST rate 12% claimed under Schedule II – Sr. No.81 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods should not be rejected and IGST rate 18% under Schedule III–Sr.No.111 of said notification should not be levied.
- ii. Differential IGST amount of **Rs. 1,05,619/- (Rs One lakh Five thousand Six hundred Nineteen only)** with respect to the items covered under Bill of entry as mentioned in Table - A to this notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- iii. The subject goods as detailed in Table - A to this notice having a total assessable value of **Rs 15,11,003/- (Rs Fifteen lakh Eleven thousand Three only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv. Penalty on the duty specified in the consultative letter should not be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- v. Penalty should not be imposed on the Importer under Section 112 (a) and /or 114A of the Customs Act, 1962.

WRITTEN SUBMISSIONS AND RECORDS OF PERSONAL HEARING

9. Observing the Principle of Natural Justice, the noticee M/s Suraj Enterprises was given opportunities of Personal Hearings on 12.09.2025, 22.09.2025 and 26.09.2025, which was attended by Sh. Rajat Garg on behalf of the noticee on 12.09.2025 and 26.09.2025. The representative of the noticee vide their submission stated that they had already deposited the differential duty alongwith interest. In this regard, the importer has submitted a copy of

Challan no. HCM 116 & 117 dated 04.04.2022 for payment of amount Rs. 1,31,012/- (IGST Rs. 1,05,620/- & Rs. 25,392/-).

10. The Payment Challan has been verified by the Cash Section vide their letter S/10/706/2024-25/JC/Gr IIG/NS-I/ CAC/JNCH dated 26.09.2025.

DISCUSSIONS AND FINDINGS

11. I have carefully gone through the facts of the case and submission of the noticee. I find that the core issue to be decided in the case was to decide the applicable rate of IGST. M/s. Suraj Enterprises had imported items viz. “Pouch” etc. vide Bills of Entry as mentioned in Table – A above by classifying the goods under CTH 3926 and paying IGST @12% under Serial no. 81 of the Schedule II of Notification No.01/2017-integrated Tax (Rate) dated 28.06.2017. The Show Cause Notice had alleged that the goods were rather liable to a levy of IGST@18% under Serial no. 111 of the Schedule III of Notification No.01/2017-integrated Tax (Rate) dated 28.06.2017 as amended.

12. In this regard, I find the importer in their submission has only stated that they have paid the differential IGST amount alongwith the interest. Therefore, I find that the importer has, in principle, agreed to the allegation of the Show Cause Notice that the goods were correctly liable for a levy of IGST@18% under serial no. III-111 of the said notification. However, I will proceed to examine the allegation of the Show Cause Notice in the interest of justice.

13.1 I find that the goods have been imported with a description “Pouch” under the CTH 3926 and this fact is undisputed. Further, I find that the serial number II-81 (IGST@12%) of the IGST notification as amended under which the goods are imported and serial No. III 111 (IGST@18%) under which the Show Cause Notice has proposed cover the goods as under:

IGST Schedule	Schedule Sr. No.	IGST Rate	Description of goods
II	81	12%	Feeding Bottles
III	111	18%	(Other articles of plastic and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles)

13.2 From the description of the goods covered under serial no. II-81, I find that the imported goods are clearly not covered under the Serial no. II-81. Therefore, I find that the Serial no. II-81, which provides for levy of IGST@12%, is not applicable to the impugned goods.

13.3 I further find that the Show Cause Notice has proposed Serial no. 111 of the Schedule III of the IGST notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended vide the Notification no. 43/2017 – IT rate dated 14.11.2017. The Schedule III of the notification fixes levy of IGST @18% on the goods covered under it. Further, Serial no. 111 of the Schedule-III covers goods with description “Other articles of plastic and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles)”. On perusal of the IGST notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, I find that goods under CTH3926 are covered under various Schedule and Serial no. of the IGST notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, as under:

IGST Schedule	Schedule Sr. No.	IGST Rate	Description of goods
II	81	12%	Feeding Bottles
II	82	12%	Plastic Beads
III	111	18%	(Other articles of plastic and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles)

13.4 On perusal of the descriptions of the goods as covered under different Schedules and Serial numbers impugned, I find that the imported goods, i.e., “Pouch” can be covered within the description “Other articles of plastic and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles)” as given under the Serial no. 111 of the Schedule III of the IGST notification no. 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended vide the Notification no. 43/2017 – IT rate dated 14.11.2017. Therefore, I find that the imported goods are liable for levy of IGST@18% under Serial no. III-111 as proposed in the Show Cause Notice.

13.5 I further find after the introduction of self-assessment vide Finance Act, 2011, the onus was on the Importer to make true and correct declaration in all aspects including Classification, payment of duty and calculation of duty, but in the instant case IGST amount has not been paid correctly. As per section

17(1) of the Act, "An Importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.". Thus, in this case the Importer had wrongly self-assessed the Bills of Entry by way of wrong availment of IGST Schedule, which has resulted into the Short levy of IGST. As the Importer got monetary benefit due to said act, it is clear that the Importer had deliberately made short payment of IGST by wrong availment of IGST Schedule against said goods in the Bills of Entry during self-assessment. Therefore, I find that the differential duty amounting to **Rs. 1,05,619/-** is recoverable from the Importer under Section 28(4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the said Act and for such deliberate act of omission and Commission, the importer is liable for a penalty under Section 114A of the Customs Act, 1962.

13.6 I further find that the Importer has given a declaration under section 46(4) of the Act for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable IGST rate on the subject goods was not paid by the Importer at the time of clearance of goods. It is also clear that the Importer has submitted a false declaration under section 46(4) of the Customs Act, 1962. By the act of presenting goods in contravention to the provisions of section 111(m), I find that the Importer has rendered the subject goods liable for confiscation under section 111(m) of the Act for the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer is also liable for a penal action under Section 112 (a) of the Customs Act, 1962.

13.7.1 Further, since I hold the goods valued at **Rs 15,11,003/-** (Rs Fifteen lakh Eleven thousand Three only) liable for confiscation under Section 111(m) of the Customs Act, 1962, I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgements, as enumerated below:

- i. 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.) has after observing 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), 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 regularised, 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 authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 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 from Section 111 only. Hence, the payment of 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. accordingly answer question No. (iii)."

ii. 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.).

13.7.2 Further, neither the decision 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.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.

13.7.3 Any goods that are improperly imported Section 111 of the Customs Act, 1962, becomes invocable and such goods become liable for confiscation. Hon'ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held RF imposable in case of liability of confiscation of goods under provisions of Section 111(o). The same view may be applied for goods liable for confiscation under other sub-sections of Section 111. Merely because one was not caught at the time of clearance, he cannot be given differential treatment.

13.8 I further find that the Show Cause Notice has proposed penalty under section 28(5) on the importer. I find this to be an error from the investigation as section 28 deals with- the Recovery of the duties not levied or not paid or short-levied or short- paid or erroneously refunded- and does not deal with the penalties. Further, Section 28(5) provides for a mechanism of deposition of

penalties. Further, Section 28(5) provides for a mechanism of deposition of duty and interest amount, as accepted by the importer, alongwith 15% penalty, in cases where notice under section 28(4) has been issued and further under section 28(6), the proper officer has to decide on the duty and interest, so that, the matter is decided for conclusion or otherwise.

14. Now, coming to the submission of the importer that they had paid the differential duty amount alongwith the interest, I find that the instant Show Cause Notice has been issued under Section 28(4) of the Customs Act, 1962, which can be deemed concluded under Section 28(6) of the Customs Act, 1962 if the noticee has paid the demanded duty alongwith the interest and 15% penalty within stipulated time as envisaged under Section 28(5). In this regard, I find that the importer had not paid the penalty amount as necessary under Section 28(5). Therefore, the matter cannot be deemed concluded under the Section 28(6) of the Customs Act, 1962.

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

ORDER

i. I reject the IGST rate 12% claimed under Schedule II - Sr. No. 81 of IGST levy Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods and order to levy IGST rate 18% under Schedule III - Sr. No. 111 of said notification.

ii. I confirm the demand of Differential IGST amount of **Rs. 1,05,619/-** (Rs One lakh Five thousand Six hundred Nineteen only) with respect to the item covered under Bills of entry as mentioned in Table-A above and order for recovery of the same along with applicable interest under Section 28(4) and Section 28AA of the Customs Act, 1962.

iii. I hold the subject goods as detailed in Table-A above and having a total assessable value of **Rs 15,11,003/-** (Rs Fifteen lakh Eleven thousand Three only) liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the goods have already been cleared for home consumption, I impose a redemption fine of **Rs. 1,50,000/-** (Rupees One Lakh Fifty Thousand only) on M/s. Suraj Enterprises.

iv. I order to impose penalty equal to the differential duty, i.e., **Rs. 1,05,619/-** (Rs One lakh Five thousand Six hundred Nineteen only) alongwith the applicable interest under Section 114A of Customs Act, 1962 on M/s. Suraj Enterprises. However, such penalty would be reduced to 25% of the total penalty imposed under Section 114A of the Customs Act, 1962 if the amount of duty as

confirmed above, the interest and the reduced penalty is paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

v. Since I have imposed penalty under Section 114A on the importer, I refrain from imposing penalty on the importer under Section 112a.

vi. I find the proposal of penalty under section 28(5) is to be erroneous in view of the discussion above in para 13.8.

vii. I order for appropriation of the importer deposited amount Rs. 1,31,012.21, as mentioned in para 10 above, towards the differential duty, applicable interest, Redemption fine and penalty as deliberated in above paras.

16. 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 any other law for the time being in force in the Republic of India.

पारुल
9/10/25

(डॉ पारुल सिंघल/ Dr. PARUL SINGHAL)

संयुक्त आयुक्त सीमा शुल्क / Jt. Commissioner of Customs
ग्रुप-IIIG, एन.एस.-I, जेएनसीएच ./Group-IIIG, NS- I

To,
M/s. Suraj Enterprises (AEWPK5382B),
First Floor-2415, Teliwara, Sadar Bazar,
North Delhi, Delhi-110006

Copy to:

1. The Additional Commissioner of Customs, Audit Circle D3, JNCH
2. The Deputy Commissioner of Customs, Central Adjudication Cell, JNCH.
3. The Deputy Commissioner of Customs, Gr IIG, JNCH.
4. The Deputy Commissioner of Customs, Review Cell, JNCH
5. The Deputy Commissioner of Customs, Recovery Cell, JNCH
6. The Deputy Commissioner, EDI, JNCH for uploading on JNCH website
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