



सीमाशुल्क आयुक्त का कार्यालय, (एन.एस.-IV)  
**OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-IV),**  
न्हावा-शेवा, जवाहरलालनेहरूसीमाशुल्क भवन,  
**NHAVA-SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE,**  
ता. उरण, जिला-रायगड, महाराष्ट्र-400707  
**TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA – 400 707.**

DIN: 20250678NY000000AEE4

Date of Order: 04.06.2025

Date of Issue: 06.06.2025

F. No.- S/10-1123/2023-24/ADC/Gr.VA/NS-V/CAC/JNCH

SCN No. 2423/2023-24/ADC/Gr. VA/NS-V/CAC/JNCH

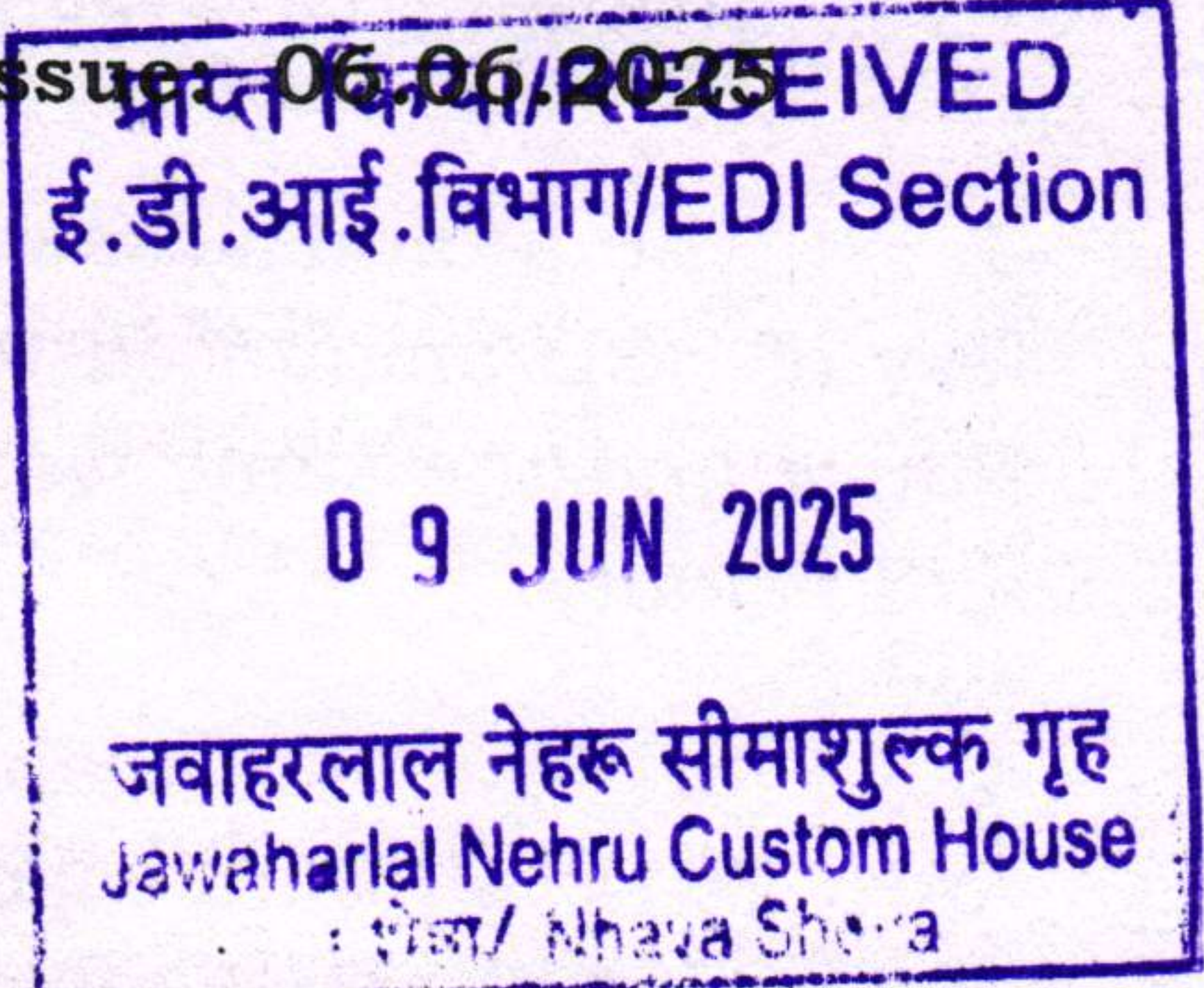
SCN Date: 05.01.2024

Passed By: Shri. Raghavendra Singh

Additional Commissioner of Customs, NS-IV

Order-In-Original No. - 264/2025-26/ADC/Gr. VA/NS-V /CAC/JNCH

Name of the Party/ Noticee- M/s Tinka Heavy Electrical Pvt Ltd (IEC-AAHCT5147M)



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### मूल आदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- 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

- 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, Nhava Sheva, Tal: Uran, Dist: Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy



**BRIEF FACTS**

M/s. Tinka Heavy Electrical Pvt Ltd (IEC- AAHCT5147M) having address as Plot No.1235, HSIIDC, Industrial Estate, Rai, Phase – I, Sonipat, Haryana – 131 029 imported goods having description as **“Battery (Mobile Parts)”** under the CTH 85076000 and taken undue benefit of Not. No. 57/2017 dated 30.06.2017 (as amended by Ntfn. 22/2018-Cus. dated 02-02-2018) and 50/2017-Cus. dated 30.06.2017 (as amended by Ntfn. 02/2021-Cus. Dated 01-02-2021).

2. On scrutiny of the import data, it was observed that goods covered under CTH 85076000 were cleared by lower rate of BCD 15% rate instead of correct BCD of 20%. From the Bills of Entry, it can be seen that the importer has paid BCD, SWS & IGST @ 15 %, 10% and 18% respectively.

3. The total assessable value in the BE, of the items is ₹ 1,71,51,605/- and short levy of BCD amounted to ₹ 11,13,136/- as described in Annexure to the Show Cause Notice and the same was recoverable from the Importer along with applicable interest and penalty.

4. In view of the above, the importer, M/s Tinka Heavy Electrical Pvt Ltd (IEC-AAHCT5147M) were called upon to show cause as to why

- Differential/short paid Duty amounting to ₹ 11,13,136/- should not be demanded under Section 28(4) of the Custom Act, 1962
- Interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act. 1962.
- The said subject goods imported vide Bills of Entry as detailed in Annexure of the Show Cause Notice having assessable value of ₹ 1,71,51,605/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- Penalty should not be imposed on the importer 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.
- Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

5. Further the Competent Authority i.e. Commissioner of Customs (NS-IV), by exercising his powers conferred under the first Proviso to section 28(9) of Customs Act, 1962, on 12.12.2024, extended the period of adjudication in the subject SCN by one year up to 03.01.2026.

**PERSONAL HEARING AND WRITTEN SUBMISSIONS**

6. In order to comply the principal of natural justice, opportunity of personal hearing in the matter were provided to the noticee vide F. No. S/10-1123/2023-24/ADC/NS-V/CAC/JNCH to appear before the adjudicating authority on 12.11.2024, 10.02.2025 and 20.05.2025 against the subject show cause notice. However, neither anyone attended the personal hearing. Here, I find that ample opportunities of personal hearing were granted to the noticee.

7. I find that the importer has submitted their reply dated 20.05.2025 wherein they stated that they have correctly classified the goods and correctly availed the benefit of notification and discharged the duty liability correctly. They have imported Lithium-ion batteries for captive consumption for manufacture of cellular mobile phones falling under 85076000 and not for battery pack.



with regards description of goods, value and other particulars made on the said Bills of Entry. There was nothing on record to indicate that the Noticee had mis-declared any particulars in the Bills of Entry filed by them while clearing the consignments. Section 111(m) of the Customs Act, 1962 come into play when there was mis-declaration of value or any particular in the BEs. They had declared all relevant particulars correctly.

**7.2** It has been proposed to impose invoke draconian penal provisions under Sections 112(a) and 114A of the Customs Act 1962 against the Noticee. The impugned show-cause notice has been issued to the Noticee proposing to confiscate the goods cleared by them earlier under Section 111(m) /111(o) of the Customs Act, 1962, though the same are not now available for confiscation as the same have already been cleared for home/captive consumption. It is stated that the allegations to this effect are unwarranted and not sustainable under the provisions of Customs law. Further, there was no infraction of any law on the part of the Noticee nor was there any mensrea and in view of above, there was no wilful misstatement or suppression of facts, the question of imposing penalty on the Noticee does not arise and requested to conclude the proceedings on the above submission.

### **DISCUSSION AND FINDINGS**

**8.** I have gone through the facts of the case, and material available on record. I find that the Show Cause Notice proposes recovery of differential duty amounting to **Rs. 11,13,136/- (Rupees Eleven Lakh Thirteen Thousand One Hundred and Thirty Six only)** under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and penalty under Section 112(a) and 114A of the Customs Act, 1962. It is also proposed that, the imported goods totally valued at **Rs. 1,71,51,605/- (Rupees One Crore Seventy-One Lakh Fifty One Thousand Six Hundred and Five only)** should be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962;

**9** I find that the importer has taken the benefit of Sl. No. 17 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (*as amended by Ntfn. 02/2019-Cus. Dated 29-01-2019*) and SI No. 528B of Customs Notification No. 50/2017-Cus. dated 30.06.2017 (*as amended by Ntfn. 02/2021-Cus. Dated 01-02-2021*) as follows:

S. No 17	85076000	Lithium-ion battery of cellular mobile phones	15%
S. No 528B	85076000	Lithium ion battery or battery pack of cellular mobile phones	15%

Vide Notification No. 03/2021 dated 01.02.2021 Entry No. 17 was omitted from Notfn 57/2017 dated 30.06.2017 and vide notification No 02/2021 dated 01.02.2021 entry No. 528B was added to Notfn. No.50/2017 dated 30.06.2017. The Importer had imported "Battery (Mobile Parts)" and cleared them under HSN 85076000 with benefit of notification no. 57/2017 at Sr no. 17 (*02/2019-Cus. Dated 29-01-2019*) and SI No. 528B of Customs Notification No. 50/2017-Cus. dated 30.06.2017 (*as amended by Ntfn. 02/2021-Cus. Dated 01-02-2021*). Above notification is applicable to Lithium-ion battery or battery pack of cellular mobile phones with BCD at 15%.

**9.1** I have gone through the document i.e. invoices available on e-sanchit, but nowhere description of goods is mentioned as Li-ion batteries, goods have been simply described as "Battery (Mobile Parts)". Accordingly, the importer is not eligible for benefit of the above-mentioned Notification. Since the Sr. No 17 of the Notification No 57/2017 and Sr. No. 528B of Customs Notification No. 50/2017 were incorrectly mentioned,



battery pack of cellular mobile phones. Thus, the benefit of 15 % BCD is not applicable to the importer and they are liable to pay BCD @ 20%. The importer had willfully taken the benefit of Sl. No. 17 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as inserted by Ntfn. 22-2018-Cus. dated 02-2-2018) and Sr. No. 528B of Customs Notification No. 50/2017-Cus. dated 30.06.2017 (as amended by Ntfn. 02/2021-Cus. Dated 01-02-2021) while filing the said Bills of Entries and evaded Customs duty on the import of Battery (Mobile Parts) for Lithium Ion Battery of Mobile Phone. However, Lithium ion is nowhere mentioned in Invoice and Bill of Entry. The importer had imported the goods under tariff head 85 by self-assessing under lower rate of BCD @15% of Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Ntfn. 22-2018-Cus. dated 02-2-2018) and Sr. No. 528B of Customs Notification No. 50/2017-Cus. dated 30.06.2017 (as amended by Ntfn. 02/2021-Cus. Dated 01-02-2021) with an intent to avoid payment of Customs Duty.

**11.** The importer is liable to pay BCD @ 20%, differential duty amounting to **Rs. 11,13,136/-** (Rupees Eleven Lakh Thirteen Thousand One Hundred and Thirty Six only) in respect of the goods mentioned under Bills of entry mentioned SCN. Further on account of the importer's aforesaid act of wilful mis-statement and suppression of facts, the customs duty so evaded is required to be demanded in terms of Section 28 (4) of the Customs Act, 1962. Further, the interest at the prescribed rate as applicable is also liable to be recovered from them in terms of Section 28AA of Customs Act, 1962.

**12.** 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:

**12.1** 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 misclassified and duty amount has not been paid correctly. **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.'*

**12.2 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*



**12.3 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.'*

**12.4 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 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54*

*(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;'*

**12.5 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.'*

**12.6 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.'*

**13.** 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



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

**14.** 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 ₹ **11,13,136/-**. 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.

**15.** Section 111(m) of Customs Act, 1962 provides for confiscation of the 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

**16.** 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. 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.

**17.** I find that, on the basis of the facts and circumstances mentioned herein above, it appears that the importer has knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to notification Sr. No., with an intent to evade the applicable duty and the by their aforesaid acts of omission and commission appears to have rendered the impugned goods liable for confiscation under Section 111 (m) of the Customs Act, 1962. 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*



*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)."*

**18.** 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.

**19.** Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 112(a) and 114A of the Customs Act, 1962 on the notice firm. 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 notification by the importer of such repute having access to all legal aid, tantamount to suppression of material facts and wilful 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.

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

### **ORDER**

(i) I reject the benefit of lower rate of BCD @15% availed as per 57/2017 dated 30.06.2017(as amended by Ntfn. 22/2018-Cus. dated 02-02-2018) and 50/2017-Cus. dated 30.06.2017 (as amended by Ntfn. 02/2021-Cus. Dated 01-02-2021) and I order to re-assess the Bills of Entry with BCD @ 20% under CTI 85076000.

(ii) I order to confirm the demand of differential duty of **Rs. 11,13,136/- (Rupees Eleven Lakh Thirteen Thousand One Hundred and Thirty Six only)** on the impugned goods imported under Section 28(4) of Customs Act, 1962, from M/s. Tinka Heavy Electrical Pvt Ltd

(iii) I order to recover applicable interest on the amount of **Rs. 11,13,136/- (Rupees Eleven Lakh Thirteen Thousand One Hundred and Thirty Six only)** under Section 28AA of the Customs Act, 1962 from M/s. Tinka Heavy Electrical Pvt Ltd

(iv) I order to confiscate the impugned goods having assessable value of **Rs. 1,71,51,605/- (Rupees One Crore Seventy-One Lakh Fifty One Thousand Six Hundred and Five only)** under Section 111(m) of the Customs Act, 1962, but since the same have already been cleared, hence I impose a redemption fine of **Rs. 17,00,000/- (Rupees Seventeen Lakh only)** under Section 125 of the Customs Act, 1962 upon M/s.



and Interest demanded above within thirty days from the date of the communication of this order. Further the option to pay such reduced penalty shall also be paid within a period of thirty days of communication of this order.

(vi) Since penalty under Section 114 has already been imposed, I refrain from imposing penalty under Section 112 (a) of Customs Act, 1962.

21. 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.

  
(RAGHAVENDRA SINGH)

Additional Commissioner of Customs,  
CAC, NS-V, JNCH

To,

M/s. Tinka Heavy Electrical Pvt Ltd (IEC- AAHCT5147M)  
Plot No.1235, HSIIDC, Industrial Estate, Rai,  
Phase - I, Sonipat, Haryana - 131 029

**Copy to: -**

1. The Asst./Dy. Commissioner of Customs, Centralised Adjudication Cell, JNCH
2. The Dy. Commissioner of Customs, Circle- D1, Audit, JNCH
3. The Dy. Commissioner of Customs, Review Cell, JNCH.
4. The Dy. Commissioner of Customs, Recovery Cell, JNCH.
5. The Dy. Commissioner of Customs, Group VA, JNCH
- ✓ 6. The Dy. Commissioner of Customs, EDI for uploading in website
7. Notice Board (CHS Section)
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