

 सत्यमेव जयते BHARAT SARKAR	सीमाशुल्क आयुक्तकाकार्यालय (एनएस-1) OFFICE OF COMMISSIONER OF CUSTOMS (NS-1) जवाहरलालनेहरूकस्टमहाउस, न्हावा-शेवा JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA ताल-उरण, जिला- रायगढ़, महाराष्ट्र-400 707 TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA-400707	 INDIAN CUSTOMS
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F. No. S/26-Misc-71/2024-25/Gr.IIG/JNCH
 S/10-Adj-273/2025-26/Gr. IIG/JNCH

Date of order:29/09/2025
 Date of issue:29/09/2025

SCN No. 1254/2024-25/AC/GR.IIG/NS-1/CAC/JNCH
 DIN:20250978NX000052045A

SCN Date: 14.10.2024

Passed by: Shri Raj Kumar Mishra
 Asstt. Commissioner of Customs
 Gr. 2 G, NS-I, JNCH, Nhava Sheva.

Order No. 1026/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH
 आदेशसंख्या-1026/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH
 Name of Importer: M/s. Unique Collection (IEC: AMKPP5280D)

मूलआदेश

- यहप्रतिजिसव्यक्तिकोजारीकीजातीहै, उसकेउपयोगकेलिएनिःशुल्कदीजातीहै।
- इसआदेशकेविरुद्धअपील, सीमाशुल्कअधिनियम 1962 कीधारा 128(1) केतहत, इसआदेशकीसूचनाकीतारीखसेसाठदिनोंकेभीतर, सीमाशुल्कआयुक्त (अपील), जवाहरलालनेहरूसीमाशुल्कभवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र - 400707 कोकीजासकतीहै।अपीलदोप्रतियोंमेंहोनीचाहिएऔरसीमाशुल्क (अपीलनियमावली, 1982) केअनुसारफॉर्मसी.ए.1 संलग्नकमेंकीजानीचाहिए।अपीलपरन्यायालयशुल्ककेरूपमें ₹1.50 मात्रकास्टांपलगायाजायेगाऔरसाथमेंयहआदेशयाइसकीएकप्रतिलगाईजायेगी।यदिइसआदेशकीप्रतिसंलग्नकीजातीहै, तोइसपरन्यायालयशुल्ककेरूपमें ₹1.50 कास्टांपभीलगायाजायेगा, जैसाकिन्यायालयशुल्कअधिनियम 1970 कीअनुसूची 1, मद 6 केअंतर्गतनिर्धारितकियागयाहै।
- इसनिर्णययाआदेशकेविरुद्धअपीलकरनेवालाव्यक्ति, अपीलअनिर्णीतरहनेतक, शुल्कयाशास्तिकेसंबंधमेंविवादहोनेपरमांगेगएशुल्कके 7.5% का, अथवाकेवलशास्तिकेसंबंधमेंविवादहोनेपरशास्तिकाभुगतानकरेगा।

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 UNIQUE COLLECTION (IEC No.AMKPP5280D) situated at UNIQUE COLLECTION 16 SWAMI CHAWL ASALFA, GHATKOPER WESTMUMBAI, MAHARASHTRA 400084 (hereinafter referred to as 'Importer') had imported 'Packing Box'(herein after referred to as 'subject goods'), classified under 48191090 vide the Bills of Entry as mentioned in table below.

Table - A

BE No.	BE Date	CTH	Item Description	Total Assessable Value-Assessed	Differential IGST Payble
5364465	19.10.2019	48191090	GIFT BOX/BAG (1200 PCS)	7634.88	508.45

2. During the course of Post Clearance Audit of Bills of Entry, it has been noticed that importer has paid the IGST @ 12% on the subject goods imported by declaring that the said goods are 'EMPTY CARTON BOX, EMPTY CARTON BOX WITH TAPE, COLOR CARTON BOX,' classifying the same under CTH 48191090. However, the concessional rate of IGST @12% is applicable only for the packages which are corrugated in nature. The non-corrugated other-wise known as card board packages are not eligible for concessional rate of IGST @ 12%. It is also noticed that the description provided in the B/Es does not indicate clearly whether the goods are made up of corrugated paper or not.

3. The broad description of CTH 4819 is

48.19 - *"Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; Box files, letter trays, and similar articles of paper or paperboard of a kind used in offices, shops or the like".*

4819.10 - *Cartons, boxes and cases, or corrugated paper or paperboard*

4819.20 - *Folding cartons, boxes and cases, of non-corrugated paper or Paperboard*

4819.30 - *Sacks and bags, having a base of a width of 40 cm or more*

4819.40 - *Other sacks and bags, including cones*

4819.50 - *Other packing containers, including record sleeves*

4819.60 - *Box files, letter trays, storage boxes and similar articles, of a kind used in offices shops, or the like.*

4. The description provided in the Bills of Entry does not indicate clearly whether the goods are made up of corrugated paper and in order to avail the benefit of lower IGST, its onus is on the importer to prove beyond doubt that the subject goods qualify for such benefit. In absence of such information the subject goods are liable to be classified under CTH 48192090.

5. There are various types of paper packages presently being used by the industry for packing of various goods. Some of the paper packages are as under:

a. Paperboard boxes

Paperboard is a paper-based material that is lightweight, yet strong. It can be easily cut and manipulated to create custom shapes and structures. These characteristics make it ideal to be used in personalized packaging. It is made by turning fibrous materials that come from wood or from recycled waste paper into pulp, and then bleaching it. Paperboard packaging comes in various grades, each suitable for different packaging requirements. SBS (or solid bleached sulphate) paperboard can be used for packing cosmetics, medicines, milk and juice, cosmetics, frozen food and more. Choosing kraft, or CUK (coated unbleached kraft) paperboard packaging are for those who prefer the natural and environmentally-friendly look of recycled paper, which can be used for similar packaging applications. Kraft is often seen to be less resistant to moisture, making it less suitable for food-related products, or frozen-goods packaging. With the right combination of design options, paperboard packaging can look high-end, without high-end pricing.

b. Corrugated boxes

It consists of 3 layers of paper, an outside liner, an inside liner and a corrugated medium (also known as fluting). The corrugated medium that gives it strength and rigidity. The main raw material that is used to construct the corrugated board is most recycled paper, made on large high-precision machinery known as corrugators. These types of boards can re-used and recycled again and again as a source of pulp fibre. Corrugated boards are of different types, single faced, double faced (single wall), twin wall, and triple wall. They can be used to make packaging with different characteristics, performances, and strength. The board is cut and folded into different sizes and shapes to become corrugated packaging. Other applications of corrugated board packaging include retail packaging, pizza delivery boxes, small consumer goods packages, and so forth.

c. Rigid boxes

This is the type of box used to package iPhones or those luxury retail products such as Rolex, Tiffany & Co and Marc Jacobs. This type of cardboard material is called a rigid box. A rigid box is made out of highly condensed paperboard that is 4 times thicker than the paperboard used in the construction of a standard folding carton. The easiest real-world example of rigid boxes are the boxes that hold Apple's iPhones and iPads, which are 2-piece setup rigid boxes. Compared to paperboard and corrugated boxes, rigid boxes are definitely among the most expensive box styles. The rigid boxes usually do not require dies that are expensive or massive machinery and are often hand-made. Their non-collapsible nature also gives them a higher volume during shipping, which easily incurs higher shipping fees. These boxes are commonly used in merchandising cosmetics, jewellery, technology, and high-end luxury couture. It is easy to incorporate features such as platforms, windows, lids, hinges, compartments, domes, and embossing in a rigid box.

d. Chipboard packaging

Chipboard packaging is used in industries such as electronic, medical, food, cosmetic, and beverage. A chipboard basically is a type of paperboard that is made out of reclaimed paper

stock. It can be easily cut, folded, and formed. It is a cost-effective packing option for your products. It comes in various densities and strength is determined by how high the density of the material is. If you want images to be directly printed onto the chipboard, you can treat the chipboard with bleach sulphate, and with CCNB (Clay Coated News Back) which makes the material even more durable.

6. From the above, it is very clear that there are various packages including the corrugated packages/boxes. However, it is onus on the part of the importer to declare correct description of the goods while filing the Bill of Entry in order to claim the benefit as provided by the Government. In the absence of the complete description, it would be construed that the goods were non-corrugated and the complete description was not given by the importer for the purpose of getting the concessional rate of duty thereby mis-declaration of the goods. A carton is a box or container usually made of liquid packaging board, paperboard and sometimes of corrugated fibreboard. Many types of cartons are used in packaging. Sometimes a carton is also called a box. A packing box also appears to be a carton box. In the instant case there is possibility of a carton to be corrugated and non-corrugated, unless complete description is given in the Bill of Entry, it would not be possible to decide whether it is corrugated carton/box or not. In the absence of such description, it appears that it is non-corrugated carton and the same attracts IGST @18% and the importer declared such a way to get benefit of concessional rate of duty. But the importer has paid the IGST @12% thereby short paid the IGST and the same is recoverable from them under the provisions of the Customs Act, 1962.

7. In view of the above findings, a consultative letter (CL) No. NS-IV/1862/2021-22/A-3 vide F. No. S/2-Audit-Gen-300/2018-19/JNCH/A-3/PART FILE/1862/2021-22 was issued in the month of 08-2021 to the importer advising for payment of the aforesaid amount of Differential Duty along with applicable interest and penalty. **In this regard, no written submission/clarification/letter has been received in this office from the importer.**

8. It appears that the impugned goods of the importer are nothing but non-corrugated carton boxes other-wise known as card board boxes used for packing. But the importer has paid the IGST @12% as if the goods were corrugated boxes and classified the same under 48191090 with an intention to get the benefit of the IGST Notification No.01/2017 dated 28.06.2017. In absence of information the goods viz., whether the carton boxes are corrugated in nature and on the basis evidence available with the department, it appears that the impugned goods are non-corrugated carton boxes or packages and thus appear to be classifiable under CTH 481920 as "Folding cartons, boxes and cases, of non-corrugated paper or paper board" and are liable for IGST @ 18%.

9. The CTH-4819 is a general CTH, whereas the CTH 481920 is more specific for the subject goods. Hence, the subject goods 'EMPTY CARTON BOX, EMPTY CARTON BOX WITH TAPE, COLOR CARTON BOX,' merit classification in the CTH- 48192090 as per General Rules for the Interpretation 3(a) of Customs Tariff Schedule, which states as under:

"the heading which provides the most specific description shall be preferred to headings providing a more generic description. However, when two or more headings

each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the item in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.”

In view of above, subject goods are eligible for IGST @ 18% and not 12%.

10. In view of the above, it appears that the impugned goods of the importer are nothing but ‘Empty Box’. But the importer has paid the IGST @12% as if the goods were corrugated boxes with an intention to get the benefit of the IGST Notification No.01/2017 dated 28.06.2017. In the absence of information of the goods viz., whether the carton boxes are corrugated in nature and on the basis of evidence available with the department, it appears that the impugned goods are classifiable under CTH 481920 as “Folding cartons, boxes and cases, of non-corrugated paper or Paperboard” and are liable for IGST @ 18%. Thus, the importer has short paid the duty amounting to **Rs. 508.45/-** and same is recoverable from the importer U/s 28 (4) of the Customs Act 1962 along with applicable interest U/s 28AA and penalty under Section 112(a) and/or 114A of the Customs Act, 1962 read with the Section 28 of the Customs Act, 1962 by invoking extended period of limitation and the subject goods appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

11. 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 more specifically the RMS facilitated Bill of Entry, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods. Incomplete description of the goods declared is nothing but suppression of information with intent to get financial benefit to claim the benefit of the Notification. In view of the above, it

is very clear that the onus to give correct declaration and make correct classification of the goods being imported is on the importer only.

12. Relevant Legal Provisions: After the introduction of self-assessment vides Finance Act, 2011, the onus is 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 on the subject goods has not been paid correctly.

13. 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:

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

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

13.2 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 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.

(6) Where the Importer or the exporter or the agent or the employee of the Importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the

proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of two years shall be computed from the date of receipt of information under sub-section (5).

13.3 Section 28AA- (Interest on delayed payment of duty).

13.4 Section 46- [Entry of goods on importation, subsection 46(4)].

13.5 Section 111- (Confiscation of improperly imported goods etc.)

13.6 Section 112- (Penalty for improper importation of goods etc.).

13.7 Section 114A- (Penalty for short-levy or non-levy of duty in certain cases)

13.8 Section 117- (Penalties for contravention, etc., not expressly mentioned).

14. Acts of omission and commission by the Importer:

14.1 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 it appears that mis-declaration and mis-classification of the impugned goods was done by the importer intentionally in order to get pay IGST at reduced rate thereby to get financial benefit. Thus, the importer has suppressed the facts, thereby mis-classified the impugned goods leading to short payment of IGST.. Therefore, differential duty 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.

14.2 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 also appears that the Importer has 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 appears 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 also appears liable to penal action under Section 112 (a) and /or 114 A of the Customs Act, 1962.

15. From the foregoing, it appears that the Importer has wilfully made short payment of IGST against the import goods; that the Importer has submitted a false declaration under section

46(4) of the said Act. Due to this act of omission of Importer, there has been loss to the government exchequer equal to the differential duty.

16. Therefore, in exercise of the powers conferred by Section 28 read with Section 124 of the Customs Act, 1962, the Importer M/s UNIQUE COLLECTION, (IEC No. **AMKPP5280D**) was issued a Show Cause Notice asking them, as to why:

- (a) The subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962;
- (b) The differential duty amounting to **Rs. 508.45** as detailed in the Annexure should not be demanded and recovered from them in terms of section 28(4) of the Customs Act, 1962.
- (c) The applicable interest on the amount specified above should not be recovered from them in terms of section 28AA of the Customs Act, 1962.
- (d) Penalty should not be imposed on them under section 112(a) of the Customs Act, 1962.
- (e) Penalty should not be imposed on them under section 114A of the Customs Act, 1962.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

17. The noticee was given opportunities for Personal Hearing on 30.04.2025, 15.05.2025, and 10.06.2025 with prior intimation. However, the importer neither submitted any reply to the SCN nor any one appeared for the personal hearing on the scheduled dates. However, the importer had been given sufficient opportunities in compliance of principle of natural justice however the importer did not avail the same. I, therefore, in terms of Section 122A of the Customs Act, 1962 proceed to decide the case ex-parte on the basis of available record.

DISCUSSION AND FINDINGS

18. I have carefully gone through the facts and records of the case. I find that the importer M/s. **UNIQUE COLLECTION (IEC No. AMKPP5280D)** has filed Bill of Entry (BE) bearing No. **5364465** dated **19.10.2019** for the clearance of "**Gift Box/Bag**" valued at **Rs. 7634.88/-** under **CTH 48191090**. IGST paid on the said item was at the rate **12%** as per Notification No. 01/2017 -Integrated Tax (Rate) dated 28.06.2017. The importer has neither responded the SCN nor appeared for personal hearing fixed on various occasion. As such the SCN remained uncontested.

19. I find that the issue involved in the case is as to whether the importer has wrongly classified the subject goods under CTH **48191090** and claimed IGST @12% as per Notification No. 01/2017, or, as proposed by the impugned notice, the goods having description "**Gift Box/Bag**" rightly classification under **48192090** attracting IGST at the rate of 18% as per Notification No. 01/2017. I find that the impugned goods are classifiable under CTH 48192090 and are liable for IGST @ 18%. Thus, the importer has short paid the duty amounting to **Rs. 508.45/-**. As it is evident from record that the Importer had wilfully mis-declared the subject

goods by way wrong IGST Schedule for the purpose of importing the same, declaring IGST @12% under instead of 18% as per IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017. I find that the impugned goods attract IGST rate @ 18% under the IGST notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017. Consequently, I hold that the importer has evaded payment of IGST amounting to **Rs. 508.45/-** as indicated in Table-A.

20. I observe that after introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration in all aspects in the Bill of Entry and to pay the correct amount of duty. In the instant case, the subject goods were cleared under IGST @ 12% instead of IGST @ 18%. This has resulted in short payment amounting to **Rs. 508.45/-** and hence has caused loss to the public exchequer and accrued monetary benefit to the importer. Therefore, it is evident that the importer has suppressed the facts and willfully mis-declared the exact nature of the goods with an intent to evade the custom duty. Hence, the provisions of Section 28 (4) is invocable in the case and the said differential duty is recoverable under the provisions of the Section 28(4) of the Act, along with applicable interest as provided under Section 28AA of the Customs Act, 1962.

21. Further, the Importer has submitted a false declaration, by suppressing the facts as stated in above para, under Section 46(4) of the Act as much as the importer has availed benefit of lower IGST under Notification No. 01/2017 serial number 224 of Schedule II instead of applicable serial number 438 of Schedule- III of said Notification and paid IGST @12% instead of paying IGST @18%. Thus, the imported goods in question are liable for confiscation under Section 111 (m) of the Customs Act. For the above act of deliberate omission and commission that rendered the subject goods liable to confiscation makes the Importer, **M/s. UNIQUE COLLECTION (IEC: AMKPP5280D)**, liable to penal action u/s 112(a) and/or 114A/or 114AA of the Customs Act, 1962 read with the section 28 of the Customs Act, 1962.

22. On the aspect of redemption fine, I find that since the imported goods is leviable to IGST @ 18% and by not paying the same the importer has availed undue benefit in the instant case and therefore, the liability of the goods for confiscation would definitely be there under Section 111(m) of the Customs Act, 1962. I find that goods imported vide bill of entry **5364465 dated 19.10.2019** are not available for confiscation. In this regard, I rely upon the order of Hon'ble Madras High Court in the case of Visteon Automotive Systems India Pvt Ltd Vs CC Chennai [C.M.A. No. 2857 of 2011 & M. P. No. 1 of 2011] wherein it has been held that:

"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”.

Thus for the imposition of fine under Section 125 of the Customs Act, 1962, the non-availability of the goods is immaterial.

23. Now coming to the issue of penalties I find that the impugned notice proposes penalty under Section 112(a)/114A of the Customs Act, 1962. In this regard, I find that the importer willfully suppressed the exact nature of goods by paying IGST under the IGST Notification No. 01/2017 and intentionally did not mention/declare correct fact of levibility of IGST @ 18% in the B/Es with malafide intention to evade duty. Hence, the IGST amounting to **Rs. 508.45/-** was short paid. 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, the Importer has short paid IGST which tantamount to suppression of material facts and wilful mis-statements. The "mens rea" can be deciphered only from "actus reus" and in the instant case, I find that the Importer is an entity of repute having access to all kinds of legal aid. Thus, providing wrong declaration and claiming undue benefit on account of short-payment IGST by the said Importer in the various documents filed with the Customs amply points towards their "mens rea" to evade the payment of duty. Thus, I find that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for demand of duty is rightly invoked in the present case. Upon the same findings, I find that the Importer is also liable for penalty under Section 114A of the Act. Further, as penalty under section 114A is imposable, penalty under section 112a is avoided.

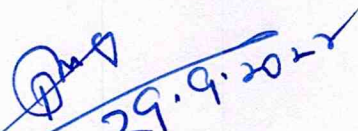
24. In view of the discussion and findings as above, I pass the following order:

ORDER

- i. I order to reject the self-assessment done by the Importer **M/s UNIQUE COLLECTION (IEC No.AMKPP5280D)** for the imported goods covered under Bills of Entry No. **5364465** dated **19.10.2019** as detailed in Table -A, and order to re-assess the goods with IGST @ 18%.
- ii. I confirm the demand of differential IGST of **Rs. 508/- (Rupees Five Hundred Eight Only)** on **M/s UNIQUE COLLECTION (IEC No.AMKPP5280D)** under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA ibid.
- iii. I hold the goods valued at **Rs. 7,635/- (Rupees Seven Thousand Six Hundred Thirty Five only)** liable for confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not available for such confiscation, I impose a redemption fine of **Rs. 1000/- (Rupees One Thousand Only)** under section 125 of the Customs Act, 1962 in lieu of confiscation. The same shall be recovered from the importer.
- iv. I impose a penalty equal to the sum of **Rs. 508/- (Rupees Five Hundred Eight Only)** and applicable interest on the importer, **M/s UNIQUE COLLECTION (IEC No.**

- * **AMKPP5280D)** under section 114A of the Customs Act, 1962. 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 penalty is paid within 30 (thirty) days of communication of this order, in terms of first proviso to Section 114A of the Customs Act, 1962. Since penalty has been imposed under section 114A.
- v. I refrain from imposing penalty under Section 112a as the penalty is imposed under section 114A of the Customs Act, 1962. I also refrain from imposing penalty under Section 114AA on the importer.

25. 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.


(Raj Kumar Mishra)
Assistant Commissioner of Customs
Appraising Group-IIIG, JNCH, NS-I

To,
M/s **UNIQUE COLLECTION (IEC No. AMKPP5280D)**
16 SWAMI CHAWL ASALFA, GHATKOPER WESTMUMBAI,
MAHARASHTRA 400084.

Copy to;

1. The Deputy Commissioner of Customs, CRAC, JNCH.
2. The Deputy Commissioner of Customs, Central Adjudication Cell, JNCH.
3. Notice Board
4. Office Copy