



भारतसरकार



भारतसरकार/ Government of India
वित्तमंत्रालय / Ministry of Finance



भारत 2023 INDIA
ONE EARTH - ONE FAMILY - ONE FUTURE

सीमाशुल्कप्रधानआयुक्तआयुक्तकार्यालय, न्हावाशेवा-I, मुंबईसीमाशुल्कजोन-II
जवाहरलालनेहरूकस्टमहाउस, पोस्ट: शेवा, तालुका: उरण, जिला: रायगढ़, महाराष्ट्र-4007007
OFFICE OF THE Pr. COMMISSIONER OF CUSTOMS, NS-I, MUMBAI CUSTOMS ZONE-II
JAWAHAR LAL NEHRU CUSTOM HOUSE, Post: Sheva, Taluka: Uran,
Dist: Raigad, Maharastra-400707.

F. No.. S/26-SCN-80/2024-25/GR.IIH-K
F.No. S/10-Adj- 90 /2025-26/Gr. II (H-K)

Date of order: 30.09.2025
Date of issue: 30.09.2025

SCN No. 1241/2024-25/AC/Gr. II (HK)/NS-1
DIN. No. 20251078 NW000061666B

Passed by: Kilaru Mahendranadh
Asst. Commissioner of Customs,
Gr.II (H-K), NS-I, JNCH, Nhava Sheva.

Order No.: 1090 /2025-26/AC/Gr.II(H-K)/NS-I/CAC/JNCH
Name of the Importer: M/s. Photoquip India Limited (IEC: 0394013514)

मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962की 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 -400 707को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982के अनुसार फॉर्म सी.ए. 1संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50रुपये 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 1.50रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970की अनुसूची 1, मद 6के 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, 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.
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.

The proceeding of the present case emanate out of Show Cause Notice. No 1241/2024-25/AC/Gr. II (H-K)/NS-1/CAC/JNCH issued vide File No. S/26-SCN-80/2024-25/Gr. II (H-K) by the Assistant Commissioner of Customs, Gr. II (H-K), Office of the Commissioner of Customs, JNCH, Nhava Sheva, Taluka- Uran, District- Raigad, Maharashtra-400707 to **M/s. Photoquip India Limited (IEC: 0394013514)**. The brief facts of the case are as follows:

Whereas, **M/s. Photoquip India Limited (IEC: 0394013514)** having address at **'10/116, Salt Pan Division, Antop Hill, Wadala East, Mumbai-400037'** (hereinafter referred to as 'the importer') had cleared their imported items as per Annexure-A (hereinafter referred to as 'the subject goods') vide Bill of Entry No. **5281309, dated 14.10.2019** as mentioned in Table-A, by classifying the same under CTH- 4016. The IGST paid on the said item was 5% as per Serial No. 191 of Schedule-I of Notification No. 01/2017- Integrated Tax (Rate) dt. 28.06.2017.

Table-A

Name of importer	Description	BE No./Date	CTH	Assessable Value	IGST Paid (5%)	IGST (18%)	Differential duty
Photoquip India Limited	Friction Washer 204.093	5281309/14.10.2019	40169350	9,435	524	1,885	1,361

2. The appropriate IGST on the subject item is 18% as per Sr. No. 123A of Schedule III of Notification No. 01/2017. The relevant part of the Notification No. 01/2017 is as under:

IGST Schedule	Schedule Sr. No	Description
I-191	4016	Erasers
III-123A	4016	Other articles of vulcanised rubber other than hard rubber (other than erasers, rubber bands)

3. From the description of the goods declared in the respective Bills of Entry (As per Table-A), it is seen that the goods in question are not eligible for IGST payment @5% under Sr. No. 191 of Schedule-I of IGST Notification No. 01/2017, which clearly & specifically is allowed for "Erasers" only. Therefore, the goods imported by you attracts levy of IGST @18% under Sr. No. 123A of Schedule-III of Notification No. 01/2017. The details of description of goods, Bills of Entry, applicability of correct IGST amount, are as per Annexure-A to the Audit Report.

4. On comparing both the entries and rates as mentioned above it is noticed that IGST @ 5% is applicable only to Erasers. All other items except Rubber Band imported under CTH-4016 attract IGST @18%. Hence, it appears that the importer had wilfully mis-declared the subject goods by way wrong IGST Schedule for the purpose of importing the same, declaring IGST @5% as per Sr. No. 191 of Schedule-I instead of 18% as per Sr. No. 123A of Schedule-III of IGST Notification No. 01/2017-Integrated

Tax (Rate) dated 28.06.2017 thereby paying lower duty than applicable and thus the provisions of Section 28 (4) are invocable in this case.

5. Accordingly, a **Consultative Letter No. 706/23-24 issued vide F. No. S/2-Audit-Gen-33/2023-24/JNCH/E2 (CL No. 706/23-24 dated 21.12.2023)** 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 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 Consultative letter was issued considering the Pre-Notice Consultation Regulations, 2018. However, the Importer has not responded till date.

6. Relevant Legal Provisions: 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 IGST amount has not been paid correctly.

7. 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:

7.1 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.

7.2 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).

7.3 Section 28AA- Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

7.4 SECTION 46. Entry of goods on importation, subsection 46(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.

7.5 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.....;

7.6 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 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 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 percent of the duty sought to be evaded or five thousand rupees, whichever is higher.....”

7.7 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:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that -

(i) *the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

(ii) *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.*

7.8 *Section 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.*

8. Acts of omission and commission by the Importer:

8.1 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 due to wrong selection of IGST Schedule. As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by wilful mis-classification of the said goods in the Bills of Entry during self-assessment. 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.

8.2 It appears 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 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 and of the Customs Act, 1962.

9. From the foregoing, it appears that the Importer have wilfully mis-classification the goods; that the Importer have 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.

10. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962 **M/s. Photoquip India Limited (IEC: 0394013514)** was hereby called upon to show cause to the Competent Authority, Gr-2H, JNCH, Nhava Sheva, Taluka- Uran, District- Raigad, Maharashtra- 400707, within 30 days of the receipt of the notice, as to why:

- i. The IGST rate claimed under Schedule- I, Sr. No. 191 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 under Schedule III, Sr. No. 123A of said notification should not be levied.
- ii. Differential IGST amount of **Rs.1361/- (Rupees One Thousand Three Hundred Sixty One 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. 9435/- (Rupees Nine Thousand Four Hundred Thirty Five Only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv. Penalty on the duty should not be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- v. Penalty should not be imposed on the under Section 112(A), 114(A) & 117 of the Customs Act, 1962.

Record of Personal Hearing and submission

11. The importer was given opportunities to be appear for Personal Hearing on 28.07.2025, 04.08.2025 and 11.08.2025 before the Adjudication Authority with their submissions and relevant documents if any. Neither importer nor their representative appeared for Personal Hearing before the Adjudication Authority.

Discussion and Findings

I have carefully gone through the facts of the case, the allegations made in the Show Cause Notice, the available evidence on record, and the relevant legal provisions. Despite having been afforded sufficient opportunities, the noticee neither filed any reply nor availed the opportunity of personal hearing. Therefore, I proceed to decide the matter ex-parte on the basis of the records available.

1. From the perusal of the Bills of Entry (Table-A), it is noticed that the importer, M/s. Photoquip India Limited, classified the subject goods under CTH 4016 and availed concessional IGST @ 5% under Sr. No. 191 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017, which specifically covers only "Erasers."

2. On examination of the description of the goods, it is observed that the same are not "Erasers" but fall under the residual entry "Other articles of vulcanised rubber other than hard rubber (other than erasers, rubber bands)" covered under Sr. No.

123A of Schedule-III of Notification No. 01/2017, attracting IGST @ 18%. Thus, the importer has mis-applied the concessional rate meant exclusively for "Erasers."

3. It is therefore evident that the importer, at the time of filing Bills of Entry under self-assessment as mandated by Section 17 of the Customs Act, 1962, has mis-declared/incorrectly applied the notification entry, resulting in short levy of IGST to the tune of ₹ 1,361/-. This act also amounts to furnishing a declaration under Section 46(4) of the Act which is not true and correct.

4. Further, the said act renders the subject goods liable for confiscation under Section 111(m) of the Customs Act, 1962, as the particulars declared in the Bills of Entry do not correspond with the actual legal incidence of duty. Consequently, the importer becomes liable for penal action under Section 112(a) and Section 114A of the Customs Act, 1962.

5. I also note that despite issuance of Consultative Letter dated 21.12.2023 under Pre-Notice Consultation Regulations, 2018, the importer has failed to respond or voluntarily discharge the differential liability. This shows that the importer has not only failed to comply with the statutory provisions but also gained monetary benefit by mis-classification. Therefore, extended period provisions under Section 28(4) of the Customs Act, 1962 are invokable.

In view of the foregoing, I hold that the importer has contravened the provisions of Section 17, Section 28(4), Section 125, Section 46(4), Section 111(m) read with Section 112(a), Section 114A and Section 117 of the Customs Act, 1962. Hence, the demand of differential duty along with interest and imposition of penalty is justified.

Order

In view of the above findings and in exercise of the powers vested in me under the Customs Act, 1962, I pass the following order:

1. I reject the claim of concessional IGST @ 5% under Sr. No. 191 of Schedule-I of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 and hold that the subject goods are correctly classifiable under Sr. No. 123A of Schedule-III of the said notification, leviable to IGST @ 18%.

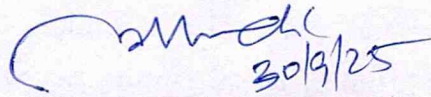
2. I confirm the demand of differential IGST amounting to ₹ 1,361/- (**Rupees One Thousand Three Hundred Sixty One only**) under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA *ibid*.

3. I hold the subject goods covered under Bill of Entry mentioned in Table-A, having an assessable value of ₹ 9,435/-, as liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the goods are not available for confiscation, I impose a redemption fine of ₹ 9,500/- (**Rupees Nine Thousand Five Hundred only**) in lieu thereof under Section 125 of the Act. *de fifty*

4. I impose penalty equal to the **Differential IGST** amount as determined at (ii) above; on the Importer under Section 114A of the Customs Act, 1962. However, If the amount

of IGST and Interest is paid within thirty days from issuance of this order, the amount of penalty liable to be paid herein shall reduce to twenty-five per cent, provided that the amount of penalty is also paid within thirty days from this order, in view of the proviso to Section 114 of the Act.

5. As I have imposed penalty under Section 114A on the importer, no penalty is imposed on the importer under Section 112(a) of the Customs Act, 1962 as per proviso to Section 114A of the Act.


30/9/25

(Kilaru Mahendranadh)
Assistant Commissioner of Customs
Group 2 (H-K), JNCH

To,
M/s. Photoquip India Limited (IEC: 0394013514)
10/116, Salt Pan Division, Antop Hill
Wadala East, Mumbai-400037

Copy To:-

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1. The Dy./Asstt. Commissioner of Customs, Audit E-2 circle, JNCH.
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