



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-78/2024-25/Gr. II (HK)

F.No. S/10-Adj- 91/2025-26/Gr. II (H-K)

Date of order: 30.09.2025

Date of issue: 30.09.2025

SCN No. 1222/2024-25/AC/Gr. II (HK)/NS-1

DIN. No.

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

Order No.: 1091/2025-26/AC/Gr.II(H-K)/NS-I/CAC/JNCH

Name of the Importer: M/s. PACK N BUY (IEC - 312071001)

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 कीतारीख 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 केरूप 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 लगायाजायेगा 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 1222/2024-25/AC/Gr. II (H-K)/NS-1/CAC/JNCH issued vide File No. S/26-SCN-78/2024-25/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. PACK N BUY (IEC – 312071001)**. The brief facts of the case are as follows:

2. While analyzing the data, it is observed that **M/s. PACK N BUY (IEC – 312071001)** having address at 247 Amrut Towers, 1st floor, Telang Road, Matunga, mumbai 400 019 (hereinafter referred to as ‘the Importer’) had imported items viz. “*Folding Mat small*” etc. (hereinafter referred to as ‘the subject goods’) vide Bill of Entry as mentioned in Annexure-A, classifying the same under CTH 3926 and the same has been cleared through Customs.

3. However, it is observed that importer has imported the goods as mentioned in Annexure-A and has paid IGST @ 12% under serial number 81 of Schedule-II of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended) & Notification 43/2017-IT rate dated 14.11.2017 (as amended), it appears that imported goods will 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%.

For better appreciation, the relevant part of Notification 01/2017 is as below:-

IGST Sched ule	Schedu le Sr. No.	IGST rate	Description of goods
II	81	12%	Feeding Bottles
II	82	12%	Plastic Beads
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.111 of 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” is very clear and specific, it appears 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) are invocable in this case.

5. Accordingly, a Consultative Letter No.692/2021-22/C1 vide F. No. F. No. S/2-Audit-Gen-283/2021-22/JNCH /C1 dated 22.06.2022 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 has not responded till date.

TABLE – A

<u>BE No.</u>	<u>BE Date</u>	<u>Item No.</u>	<u>Description</u>	<u>Assessable Value</u>	<u>IGST Amount 12% (Paid)</u>	<u>IGST Amount 18%</u>	<u>Diff. IGST. (Recoverable)</u>
5339055	17.10.2019	8	PACK N BUY	88572.66	12382.5	18573.75	6191.25

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, payment of duty and calculation of duty, but in the instant case IGST amount on the subject goods 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 by way of wrong availment of IGST Schedule. As the Importer got monetary benefit due to said act, it is 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 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 of the Customs Act, 1962.

9. 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.

10. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962; **M/s. PACK N BUY (IEC - 312071001)** is hereby called upon to show cause to the Assistant Commissioner, Gr. 2(H-K), 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 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. 6,191/- (Rupees Six Thousand One Hundred Ninty One Only)**.with respect to the items covered under Bill of entry as mentioned in Annexure-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 Annexure-A to this notice having a total assessable value of of **Rs 88,753/- (Rupees Eight Eight Thousand Five Hundred Seventy 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 114 A of the Customs Act, 1962.

Record of Personal Hearing and submission

11. The importer was given opportunities to be appear for Personal Hearing on 30.07.2025, 06.08.2025 and 13.08.2025 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

11.1 Consideration of Facts

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.

11.2 On Classification and Rate of IGST

The goods imported, viz. "Folding Mat small", were classified by the importer under CTH 3926 and assessed to IGST @12% by availing Sr. No. 81 of Schedule-II of Notification No. 01/2017-IT (Rate). On perusal, I find that Sr. No. 81 is specific to "feeding bottles," while Sr. No. 82 relates to "plastic beads." The impugned goods do not fall under either of these entries. They are clearly covered by the residuary entry at Sr. No. 111 of Schedule-III which prescribes 18% IGST for "other articles of plastics ... other than bangles, plastic beads and feeding bottles."

Accordingly, the assessment made by the importer was incorrect, and I hold that IGST is leviable @18%.

12. I find that demand was raised in this regard vide the said Consultative letter 644/23-24 issued vide F. No. S/2-Audit-Gen-283/2021-22/JNCH/C1 (CL No.692/21-22 dated 22.06.2022 and subsequent SCN dated 24-10-2024, but stands not objected against by the Importer in view of non-filing of any written submission and non-appearance before the Adjudicating Authority despite Personal Hearings accorded to the importer on 30.07.2025, 06.08.2025 and 13.08.2025. Accordingly, I find that the demand along with allegations made in the SCN stands crystallized and I hold that the allegations made against the Importer are to be upheld. As such, as proposed in the SCN, the duty foregone along with applicable Interest stands recoverable from the Importer. Further, the Importer is also liable to Penalty u/s 114A, 112(a) as proposed in the SCN.

18. I find that the importer, in the present case, has cleared the goods without payment of applicable IGST duty and thus made the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

19. I also find that the goods imported vide impugned Bills of Entry, are not available for confiscation. I observe that the present case also merits imposition of Redemption Fine under Section-125 of the Customs Act, 1962 despite goods are not available for confiscation.

20. Accordingly, I pass the following Order

ORDER

- (i) I reject the self-assessment done by the Importer for the imported goods, and order to re-assess the goods under Sr.No.111 of Schedule III of Notification No. 01/2017, imported vide BEs No. Mentioned in Table-A by **M/s. PACK N BUY (IEC - 312071001)** .
- (ii) I confirm the demand of Differential IGST amount of **Rs. Rs. 6,191/- (Rupees Six Thousand One Hundred Ninty One Only)** on the impugned goods imported vide Bill of Entry No. as mentioned in Table-A by **M/s. PACK N BUY (IEC - 312071001)** under Section 28(8) of the Customs Act, 1962, and order to recover the same from the importer along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii) I order to confiscate the impugned goods valued **Rs 88,753/- (Rupees Eighty Eight Thousand Seven Hundred Fifty Three Only)** under Section 111(m) of the Customs Act, 1962, but since the same are not available as they have already been cleared hence, I impose a **redemption fine of Rs. 8,900 /-(Rupees Eight thousand Nine Hundred Only)** under Section 125 of the Customs Act, 1962.
- (iv) 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.
- (v) 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.

21. This Order is issued without prejudice to any other action that may be taken against the noticee and or any other firm(s) or person(s) under the provisions of the Act or any other law for the time being in force in the Union of India.


30/9/25

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

To,

M/s. PACK N BUY (IEC - 312071001)

247 Amrut Towers, 1st floor, Telang Road, Matunga, Mumbai 400 019

Copy To:-

1. The Dy./Asstt. Commissioner of Customs, Audit C-1 circle, JNCH.
2. The Dy./Asstt. Commissioner of Customs, Adjudication Cell, (I), JNCH.
3. The Dy./Asstt. Commissioner of Customs, CRAC, JNCH.
4. EDI
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