

 BHARAT SARKAR	सीमाशुल्क आयुक्त का कार्यालय (एन एस-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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DIN:20250978NX000000B06E

F. No: S/26-Misc-27/2024-25/ Gr. IIG/JNCH
S/10-Adj-252/2025-26/Gr. IIG/JNCH
SCN No.: 1039/2024-25/AC/Gr. IIG/CAC/JNCH

Date of Order: 03.09.2025
Date of issue: 03.09.2025
Date of SCN: 05.09.2024

Passed by: **Rajkumar Mishra,**
Assistant Commissioner of Customs (NS-I),
JNCH, NhavaSheva.

द्वारा पारि :राज कुमार मिश्रा
सहायक आयुक्त, सीमाशुल्क, एनएस-1, जेएनसीएच.

Order No. 875/2025-26/AC/Gr. IIG/NS-I/CAC/JNCH

Name of Importer/Party/Noticee: **M/s CARGORIGIN (IEC Code 1110006641)**

मूलआदेश

- 1) यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- 2) इसआदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमा शुल्कआयुक्त (अपील), जवाहर लाल नेहरू सीमाशुल्कभवन, न्हावाशेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क(अपील) नियमावली, 1982 के अनुसार फॉर्मसी.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
- 3) इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंधमें विवाद होने पर शास्ति का भुगता न 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, NhavaSheva, Taluka: 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.

Brief Facts of the Case:

M/s CARGORIGIN (IEC Code 1110006641) having their registered address at 37, ADITYA NAGAR, A.B ROAD, INDORE, MADHYA PRADESH-452001 had imported **“Pocket Spray, Spray Pump for lotion, Soap and other toiletries dispensers” etc.** The import of goods viz. "Pocket Spray, Spray Pump for lotion, Soap and other toiletries dispensers" were mis-classified under CTH 39231090 as Soap Dispenser with BCD @15%. However, the subject goods are rightly classifiable under CTH 9616 as "Scent spray and similar toilet spray and mounts and head therefor" with BCD @20%.

2. The relevant parts of CTH 9616 are tabulated below:

TABLE-A

Chapter or Heading or sub-heading or tariff item	Description of goods	BCD rate
96161010	Scent sprays and similar toilet sprays	20%
96161020	Mounts and heads	20%
96162000	Powder-puffs and pads for the application of cosmetics or toilet	20%

3. The explanatory note to Tariff Head 9616 reads as follows:

“Scent sprays and similar toilet sprays, and mounts and heads thereof, powder- puffs and pads for the application of cosmetics or toilet preparations.”

This heading covers:

(i) Scent, brilliantine and similar toilet sprays, whether of the table or pocket type, and whether for personal or professional use. They consist of a reservoir, generally in the form of a bottle (of glass, plastic, metal or other material), to which fixed the mount; this mount incorporates the dead (which its spray forming mechanism) and a pneumatic pressure bulb (sometimes enclosed in as textile net) or a piston device.

(ii) Mounts for toilet sprays.

(iii) Head-pieces for toilet sprays,

4. During the course of Post clearance Audit of Bills of Entry, it has been prima facie noticed that the importer has imported are "Micro Pumps for Lotion dispenser, Soap dispenser, Lotion pumps, Spray Pumps, Scent Sprays and Similar Toilet Sprays and Mounts and Heads there for etc." However, these items are correctly classifiable under CTH 9616. The details of description of goods, Bills of Entry, applicability of corrected BCD amount, are as per **Table-B:**

Table B

Sr. No	BE no. & date	CTH assessed	Item Description	Total assessabl e value- Assessed	Total Duty- Assesse d	Actual duty payabl e	Duty differenc e
1.	4886161 dated 13.09.2019	39231090	D707 8302 washing liquid soap	2040.2	427.8	896.87	469.07

			dispenser plastic				
							Total 469.07

5. Accordingly, consultative letter was issued to the importer for payment of short levied duty along with applicable interest and penalty, the Importer was advised to pay the Differential BCD amounting as per Table-B-A along with interest and penalty within 15 days of the receipt of the consultative letter 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 duty along with applicable interest and penalty. The Consultative Letter was issued in terms of the Pre-Notice Consultation Regulations, 2018. However, the importer has not responded till date.

6. This mis-classification has led to loss to the Government exchequer amounting to and accrued monetary benefits to the Importer. Therefore, it appears that importer has intentionally mis-classified the imported goods under CTH as declared in Table-B- A with sole purpose to evade legitimate Customs duty whereas it should have been rightly classifiable under Tariff Head 96161020 and thus the provisions of Section 28 (4) are invokable in this case.

7. Hence Importer is liable to pay applicable interest under section 28 AA of Customs Act, 1962 and penalty under 114A of Customs Act, 1962 as detailed in Table-B- "A" to this notice.

8.1 Relevant Legal Provisions pertaining to import and importer:

(i) SECTION 111. Confiscation of improperly imported goods, etc.

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.

(ii) SECTION 112. Penalty for improper importation of goods, etc. 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) 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:

(iii) 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

willfulmis- 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:

(iv) SECTION: 114AA. Penalty for use of false and incorrect material. If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.)

8.2. SECTION 28: Recovery of duties not levied or short-levied or erroneously refunded. -

(4) Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -

(a) Collusion; or

(b) Any willfulmis-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 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.

8.3. 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 there under, 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.

9. With the introduction of the Self-Assessment scheme, the onus is on the importer to comply with the various laws, determine his tax liability correctly and discharge the same. The importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by section 17, 18 and 46 of the Customs Act, 1962 and the bills of entry (Electronic Declaration) Regulation, 2011. The importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the Allied Acts.

10. It appears that the Importer has willfullymis- classification of the imported goods under CTH as declared in Table-B- A, to evade the payment of legitimate custom duty on the imported goods. Therefore, it appears that importer has intentionally mis-classified the imported goods under CTH as declared in Table-B- A instead of Correct CTH 96161020 with sole purpose to

evade legitimate Customs duty is required to be demanded by invoking the extended period clause under section 28 (4) of the Customs Act, 1962 along with applicable interest under section 28AA of Custom Act, 1962 and penalty as applicable.

11. The Importer has cleared the said goods by mis-classifying the same under CTH as detailed in Table-B-A instead of classifying the goods under correct CTH 96161020 resulting in short levy of legitimate Customs duty amounting to **Rs 469/- (Four Hundred Sixty Nine Only)** therefore, the said goods having the total assessable value of **Rs. 2,040/- (Two Thousand Forty Only)** therefore, the said goods having the total as detailed in Table-B-A appear to be liable for confiscation under section 111(m) of the Customs Act 1962.

12. The acts of omission and commission mentioned above, which rendered the said goods liable for confiscation under Section 111(m) of the Customs Act, 1962, has rendered the importer liable for penal action under Section 112(a) & 114A of the Customs Act, 1962.

13. In view of the above, the importer **M/s CARGORIGIN** was called upon to show cause notice no. 1039/2024-25/AC/Gr. IIG/CAC/JNCH Date of SCN: 05.09.2024 to the Assistant Commissioner of Customs, Group- 2G, JNCH, Nhava Sheva asking them, as to why:

- (i) The classification of subject goods claimed under CTH as detailed in Table-B "A" of this notice should not be rejected and the same should not be re-assessed under CTH 96161020.
- (ii) The imported goods having assessable value of **Rs. 2,040/- (Two Thousand Forty Only)** under Bills of entry as detailed in Table-B should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (iii) the differential duty amounting to **Rs. 469.07** as detailed in the Table-B should not be demanded and recovered from them in terms of section 28(4) of the Customs Act, 1962.
- (iv) Applicable interest on Differential Duty for non-payment of Differential Duty should not be demanded for the Bills of entry as detailed in Table-B- under Section 28AA of the Customs Act, 1962.
- (v) Penalty should not be imposed under Section 112(a) and/ or 114A/114 AA of the Customs Act, 1962.

Personal Hearing & Written Submissions:

14. The noticee was given opportunity of being heard personally on 30.04.2025, 15.05.2025 & 10.06.2025 vide letter dated 15.04.2025, 01.05.2025 & 26.05.2025 respectively. However, the importer neither attended the scheduled personal hearing nor submitted any written reply to the show cause notice. I find that the importer had been given sufficient opportunities in compliance of principle of natural justice however the importer did not avail the same.

Discussion and Findings

15. I have carefully gone through facts and records of the case. I find that the main issue before me is to determine the classification of the imported goods. The SCN has alleged that the imported goods are to be classified under CTH 96161020 with BCD @20%. However, the Importer has classified the goods under CTH 39231090 with BCD @15%. The importer has not given any

submission regarding rightfulness of their classification. Therefore, on the basis that the goods should be classified according to their essential character and function, which, in this case, is the dispensing of liquids rather than they are made of plastic material and Based on the explanatory notes and the functional description of the goods, I find that the items should be classified under CTH 96161020.

16. 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 Bills of Entry and to pay the correct amount of duty. In the instant case, the importer failed to correctly classify the goods in the Bill of entry mentioned in Table B at the time clearance of the goods. This has resulted in short payment amounting to **Rs. 469/- (Rupees Four Hundred Sixty Nine only)** and hence has caused loss to the public exchequer and accrued monetary benefit. 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 Section 28 (4) is invocable in the case and the same 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.

17. 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 by not declaring the applicable BCD thereof at the time clearance of the goods. 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 CARGORIGIN (IEC Code 1110006641)** liable to penal action u/s 112(a) and/or 114A and/or 114AA of the Customs Act, 1962 read with the section 28 of the Customs Act, 1962.

18. On the aspect of redemption fine, I find that since the imported goods were misclassified and lower rate of BCD was availed. Therefore, by not paying the correct duty by misclassifying the goods, 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 however, the goods imported vide bill of entry as mentioned in Table - Bare 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"

19. 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 fact that the imported goods attract higher rate of BCD with malafide intention to evade duty. Hence, the duty difference amounting to **Rs. 469/- (Rupees Four Hundred Sixty Nine only)** 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 applicable duty which tantamount to suppression of material facts and willful 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. 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.

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

ORDER

- (i) I order to reject the classification of the imported goods under CTH 39231090 done by the Importer M/s CARGORIGIN (IEC Code 1110006641) for the imported goods covered under Bill of Entry as detailed in Table -B, and order to and order to classify the goods under **CTH 96161020** and with levy of **BCD @20%** and consequent IGST.
- (ii) I confirm the demand of differential duty of **Rs. 469/- (Rupees Four Hundred Sixty Nine only)** along with applicable interest on the impugned goods imported vide for Bill of Entry No as detailed in Table - B under Section 28(4) of the Customs Act, 1962, and order to recover it along with applicable interest under Section 28AA of the Customs Act, 1962.
- (iii) I order to confiscate the impugned goods covered under Bill of Entry as detailed in Table -B having declared assessable value of **Rs. 2,040/- (Rupees Two Thousand Forty Only)** under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem

these goods on payment of a redemption fine of **Rs. 500/- (Rs Five Hundred only)** under section 125(1) of Customs Act, 1962.

- (iv) I impose a penalty of equal **Rs. 2040/- (Rupees Two Thousand Forty only)** plus applicable interest under Section 114A of Customs Act, 1962 on the importer M/s CARGORIGIN (IEC Code 1110006641). 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.
- (v) I refrain from imposing penalty under Section 112(a) as the penalty is imposed under section 114A and 114AA of the 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 any other law for the time being in force in the Republic of India.


(Raj Kumar Mishra)

Assistant Commissioner of Customs,
Group-2G, JNCH, NhavaSheva

To,

M/s CARGORIGIN (IEC Code 1110006641) **EM 986912001 IN, dt. 05/09/2024**
37, ADITYA NAGAR, A.B ROAD, INDORE,
MADHYA PRADESH- 452001

Copy to;

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

