

 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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DIN:20250978NX0000999BDF

F. No: S/26-Misc-106/2024-25 Gr. IIG JNCH

Date of Order: 08.09.2025

S/10-Adj-256/2025-26/Gr. IIG/JNCH

Date of issue: 08.09.2025

SCN No.: 1054/2024-25/AC/Gr.IIG/NS-I/JNCH

Date of SCN: 09.09.2024

Passed by: Raj Kumar Mishra

Asstt. Commissioner of Customs, Gr.II-G (NS-I), JNCH, Nhava Sheva.

द्वारा पारित : राज कुमार मिश्रा

सहायक आयुक्त, सीमाशुल्क, ग्रुप IIG, एनएस-1, जेएनसीएच

Order No. 886/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH

आदेशसंख्या 886/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH

Name of Importer/Party/Noticee: M/s. ABEER ENTERPRISES (IEC: 514025361)

मूलआदेश

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

ORDER-IN-ORIGINAL

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, 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.
- 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. ABEER ENTERPRISES (IEC: 514025361), having address at D-138, FIRST FLOOR, JAIL ROAD, FATEH NAGAR, DELHI-110018 (hereinafter referred to as 'the importer') had cleared their imported items viz **"NECK & BACK CUSHION" etc.** (hereinafter referred to as 'the subject goods') vide Bills of Entry as mentioned in Table-A and the same were cleared through Customs by classifying it under CTH 9404. IGST was paid on the said item was @ 12% under serial number 224 of Schedule – II of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended from time to time).

2. The appropriate IGST on the subject item is 18% as per Sr. No. 438 of Schedule III of the said Notification. The relevant part of the Notification No. 01/2017 is as under:

SR. No. & Schedule	CTH	Description of Goods
II-224	9404	Products wholly made of quilted textile materials
III-438*	9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered (other than Coir products (Except Coir mattresses), Products wholly made of quilted textile materials and Cotton quilts.

*substituted vide Notification 43/2017 dated 14.11.2017.

3. From the description of the goods declared in the respective Bills of Entry, it is appears that the goods in question are not eligible for IGST payment @12% under serial number 224 of Schedule – II IGST Notification No. 01/2017 (as amended from time to time), which clearly & specifically is allowed for goods mentioned against the said entries. Therefore, the goods imported by the Importer attracts levy of IGST @18% under Sr. No. 438 of Schedule-III of Notification No. 01/2017. The details of description of goods, Bills of Entry, applicability of corrected IGST amount, are as per Table-A.

Table-A

Sr. No.	BE Number	Four Digit HS Code	Full Item Description	Assess able Value Amount	IGST Amount Paid @12%	IGST Notification Serial Number	IGST @ 18%	Diff. Duty
1	5699624/15.11.2019	9404	NECK CUSHION NECK CUSHION	59107.16	8653.3	II224	12979.93	4326.63
2	5699624/15.11.2019	9404	BACK CUSHION BACK CUSHION	39288.28	5751.8	II224	8627.71	2875.91
3	4958645/18.09.2019	9404	SOFA SEAT CUSHION SOFA SEAT CUSHION	993.86	145.5	II224	218.25	72.75
			Total	99389.3	14550.6		21825.89	7275.29

4. Since the applicability of IGST @ 18% as per Sr. No. 438 of Schedule III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 on *"Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not*

materials and Cotton quilts” is very clear and specific, 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 @12% under serial number 224 of Schedule-II instead of 18% as per Sr. No. 438 of Sch-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 (as amended) 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. 1623/2022-23/(C1) vide F. No. S/2-Audit-Gen-310/19-20/JNCH/C1/Pt-XXXV dated 11.01.2023 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%.

However, the importer has not responded till date.

6. Relevant Legal Provisions: After the introductions 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 is 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

7.4 SECTION 46- Entry of goods on importation, subsection 46(4) reads as:

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

7.6 Section 112- (Penalty for improper importation of goods etc.) reads as:

7.7 SECTION 114A- Penalty for short-levy or non-levy of duty in certain cases. –

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 with an intention to avail undue benefit of wrong IGST Schedule on the said goods in the Bills of Entry during self-assessment. Therefore, differential IGST amount 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 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. Subsequently, the Importer have availed benefit of wrong IGST Schedule which was not actually available for the said 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 of Rs. 7,275/-.

10. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962 **M/s. ABEER ENTERPRISES (IEC: 514025361)**, having address at D-138, FIRST FLOOR, JAIL ROAD, FATEH NAGAR, DELHI-110018 was issued a Show Cause Notice no. 1054/2024-25/AC/Gr.IIG/NS-I/JNCH dt. 09.09.2024 asking them, as to why:

- (i) The IGST rate claimed under Schedule II – Sr. No. 224 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017(as amended) for the subject goods should not be rejected and IGST rate under Schedule III – Sr. No. 438 of said notification should not be levied.
- (ii) Differential IGST amount of **Rs. 7,275/-(Rs. Seven Thousand Two Hundred Seventy Five 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. **99,389/-(Rs. Ninety Nine Thousand Three Hundred Eighty Nine 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 importer under Section 112 (a) and /or 114 A and /or 114AA of the Customs Act, 1962.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

11. 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

12. I have carefully gone through the facts and records of the case. I find that the importer **M/s. ABEER ENTERPRISES (IEC: 514025361)** has filed both Bills of Entry (BE) bearing No. **5699624 dated 15.11.2019 and 4958645 dated 18.09.2019** for the clearance of "**NECK CUSHION NECK CUSHION, BACK CUSHION BACK CUSHION and SOFA SEAT CUSHION**" valued at Rs. **99389.3/-** under **CTH 94043090**. IGST paid on the said item was at the rate **12%** as per Serial No. 224 of Schedule II of 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.

13. I find that the issue involved in the case is whether the importer has incorrectly classified the subject goods under **CTH 94043090** and claimed IGST @12% as per Sl. No. 224 of Schedule-II of Notification No. 01/2017, or, as proposed by the impugned notice, the goods having description "**NECK CUSHION NECK CUSHION, BACK CUSHION BACK CUSHION and SOFA SEAT CUSHION**" merit classification under **94043090** attracting IGST at the rate of 18% as per Sl. No.438 of Schedule III

of Notification No. 01/2017. I find that Sl. No.438 of Schedule III of Notification No. 01/2017 covers "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered (other than Coir products (Except Coir mattresses), Products wholly made of quilted textile materials and Cotton quilts". As is evident from 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 serial number 224 of Schedule-II instead of 18% as per Sr. No. 438 of Sch-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017. I find that the impugned goods attract IGST rate @ 18% under Sl. No. 438 of the Schedule III of 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. 7275/-) (Rupees Seven Thousand Two Hundred Seventy-Five Only)** as indicated in Table-A.

14. 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. 7275/-** 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 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.

15. 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. ABEER ENTERPRISES (IEC: 514025361)** 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.

16. 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 both bills of entry 5699624 dated 15.11.2019 and 4958645 dated 18.09.2019 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.

17. 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 Serial No. 224 (Schedule-II) of 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. 7275/- 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 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.

18. 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. ABEER ENTERPRISES (IEC: 514025361)** for the imported goods covered under Both Bills of Entry No. **5699624 dated 15.11.2019 and 4958645 dated 18.09.2019** as detailed in Table -A, and order to re-assess the goods with IGST @ 18% as per Sr. No. 438 of Schedule III of Notification No. 01/2017.
- ii. I confirm the demand of differential IGST of **Rs. 7,275/- (Rupees Seven Thousand Two Hundred Seventy-Five Only)** on **M/s. ABEER ENTERPRISES (IEC: 514025361)** 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. 99,389/- (Rupees Ninety Nine Thousand Three Hundred Eighty Nine 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.10,000/- (Rupees Ten Thousands 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. 7,275/- (Rupees Seven Thousands Two Hundred Seventy Five Only)** and applicable interest on the importer, **M/s. ABEER ENTERPRISES (IEC: 514025361)** 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 112 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.

19. 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/ firms concerned, or any other person, if found involved under the provisions of 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 2(G), NS-I, JNCH

To,

M/s. ABEER ENTERPRISES (IEC: 514025361) EM 986087125 IN, dt. 08/09/2025
D-138, FIRST FLOOR, JAIL ROAD,
FATEH NAGAR, DELHI-110018.

Copy to:

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

