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

DIN:20250978NX0000419744

F. No: S/26-Misc-32/2024-25 /Gr. IIG/JNCH
S/10-Adj-260/2025-26/Gr.IIG/JNCH

Date of Order: 09.09.2025
Date of Issue: 09.09.2025

SCN No.: 1053/2024-25/AC/GR.IIG/NS-I/CAC/JNCH

Date of SCN: 12.09.2024

Passed by: Raj Kumar Mishra
Asstt. Commissioner of Customs, Gr.II-G (NS-I), JNCH, NhavaSheva.

द्वारा पारित :राज कुमार मिश्रा
सहायकआयुक्त, सीमाशुल्क,ग्रुप IIG,एनएस-I, जेएनसीएच

Order No. 895/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH
आदेशसंख्या 895/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH
Name of Importer/Party/Noticee: **M/s LOTUS HERBALS COLOR COSMETICS (IEC: 509093302)**

मूलआदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए नि:शुल्क दी जाती है।.

2. 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 स्टांप 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 स्टांप 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 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, Nhava Sheva, 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 LOTUS HERBALS COLOR COSMETICS having their registered address at NO.2, FOREST LANE, SULTANAPUR, M.G ROAD, SOUTH DELHI, DELHI-110030had 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 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 preparations	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

BE Number	BE Date	IEC Code	IEC Name	CTH Assessed	Item Description1	Total Assessable Value-Assessed	Total Duty-Assessed	Actual Duty Payble (in Rs.)	Duty Difference (in Rs.)
4897734	14.09.2019	509093302	Lotus Herbal Color Cosmetics	39231090	Empty Plastic Pump (20MM Dispenser) for	824577.78	308969.4	362484.39	53514.99

					whiteglow serum - 30 ML(Empty Packing materials for cosmetics) QTY				
Total									53514.99

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-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- 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- "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 77in 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 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:

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 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 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. The Importer has wilfully mis-classification of the imported goods under CTH as declared in Table- 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- 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-A instead of classifying the goods under correct CTH 96161020 resulting in short levy of legitimate Customs duty amounting to **Rs 53,515/- (Fifty Three Thousand Five Hundred Fifteen Only)**therefore, the said goods having the total assessable value of**Rs.8,24,578/- Eight Lakh Twenty Four Thousand Five Hundred Seventy Eight Only)**therefore, the said goods having the total as detailed in Table-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) and/or 114A of the Customs Act, 1962.

13. Therefore, in terms of Section 124 read with Sections 28(4) of the Customs Act, 1962. M/s LOTUS HERBALS COLOR COSMETICS was called upon to show cause no. 1053/2024-25/AC/GR.IIG/NS-1/CAC/JNCH dated 12.09.2024 asking them, as to why:

(i) The classification of subject goods claimed under CTH as detailed in Table "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.8,24,578/- Eight Lakh Twenty Four Thousand Five Hundred Seventy Eight Only)** under Bills of entry as detailed in Table- "A" should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

(iii) The differential duty amounting of Rs. **53,515/- (Fifty three thousand five hundred fifteen only)** as detailed in Table-B should not demanded and recovered in terms of Section 28(4) of the Custom 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- "A" under Section 28AA of the Customs Act, 1962.

(v) Penalty should not be imposed under Section 112(a) and/or 114A of the Customs Act, 1962.

WRITTEN SUBMISSONS AND RECORDS OF PERSONAL HEARING

14. In order to comply with principles of Natural Justice, Personal Hearing was granted to 'the importer' on 30.04.2025, 17.06.2025 & 27.06.2025 respectively. In this regard, the importer M/s LOTUS HERBALS COLOR COSMETICS vide letter dated 24.06.2025 stated that they had paid the differential IGST vide Demand Draft no. 052973 dt. 05.10.2024 (Total Rs. 53,515/-).

DISCUSSIONS AND FINDINGS

15. I have carefully examined the facts and records of the case. I find that the importer, **M/s LOTUS HERBALS COLOR COSMETICS** filed a Bill of Entry (details as per Table-B) for the clearance of goods described as " Empty Plastic Pump (20MM Dispenser) for whiteglow serum -30 ML (Empty Packing materials for cosmetics) QTY-" under CTH 39231090.

16. I find that the importer, **M/s LOTUS HERBALS COLOR COSMETICS (IEC: 509093302)** imported the goods " Empty Plastic Pump (20MM Dispenser) for whiteglow serum -30 ML (Empty Packing materials for cosmetics)" under CTH 39231090. However, based on the HSN classification and nature of the goods, it is evident that they are appropriately classifiable under CTH 96161020. In this case, the importer has misclassified the goods under CTH 3923, which has resulted in short payment amounting to **Rs. 53,515/-** as per Table B.

17. 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 subject goods were cleared under CTH 3923 as the article of Plastic with BCD @ 15% instead of the applicable CTH 9616 with BCD @ 20%. This has resulted in short payment amounting to **Rs. 53,515/-** 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 wilfully mis-declared the exact nature of the goods with an intent to evade the custom duty. Hence, the provisions Section 28 (4) is invokable 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.

18. 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 rate of duty under CTH 3923 as the article of Plastic with BCD @ 15% instead of the applicable CTH 9616 with BCD @ 20%. 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 LOTUS HERBALS COLOR COSMETICS (IEC: 509093302)** liable to penal action u/s 112(a) and/or 114A of the Customs Act, 1962 read with the section 28 of the Customs Act, 1962. Regarding imposition of penalty under Section 114AA, I find that the Audit has not brought any document on record which was found false or incorrect. As such the penalty under Section 114AA is not imposable in the present case.

19. On the aspect of redemption fine, I find that since the imported goods are leviable to higher duty @20% 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 however, the goods imported vide bill of entry as mentioned in Table B 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"*

20. 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 wilfully suppressed the exact nature of goods by classifying the same under CTH 3923 instead of CTH 9616 in the Bills of Entry as mentioned in table A with malafide intention to evade duty. Hence, the differential duty amounting to Rs. 53,515/- 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 duty which tantamount to suppression of material facts and wilful mis-statements. The "mens rea" can be deciphered only from "actusreus" 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.

21. In view of the discussion and findings in the above paras, I pass the following order:

ORDER

i. I order to reject the classification done by the Importer **M/s LOTUS HERBALS COLOR COSMETICS (IEC: 509093302)** for the imported goods covered under Bill of Entry as detailed in Table -B, and order to re-assess the goods under CTH 96161020.

ii. I confirm the demand of differential duty of **Rs 53,515/-(Rupees Fifty-Three Thousand Five Hundred Fifteen only)** along with applicable interest on the impugned goods imported vide for Bill of Entry as detailed in Table –B, against the importer M/s LOTUS HERBALS COLOR COSMETICS (IEC: 509093302) 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. 8,24,578/- (Eight Lakhs Twenty-Four Thousand Five Hundred Seventy-Eight 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. **82,000/- (Rupees Eighty Two Thousand only)** under section 125(1) of Customs Act, 1962.

iv. I impose a penalty of equal **Rs 53,515/- (Rupees Fifty-Three Thousand Five Hundred Fifteen only)** plus applicable interest under Section 114A of Customs Act 1962 on the importer **M/s LOTUS HERBALS COLOR COSMETICS (IEC: 509093302).** 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 112a & 114AA as the penalty is imposed under section 114A of the Customs Act, 1962 on **M/s LOTUS HERBALS COLOR COSMETICS (IEC: 509093302).**

22. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.

प्राप्त किया/ RECEIVED
केंद्रीय समीक्षा एवं अपील कक्ष (I)
CENTRAL REVIEW & APPEAL CELL (I)
एनएस/NS-V
12 SEP 2025
जवाहरलाल नेहरु सीमाशुल्क भवन, न्हावा शेवा
Jawaharlal Nehru Custom House, Nhava Sheva

09.09.2025

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

To

M/s. LOTUS HERBALS COLOR Cosmetics EM986087071IN, dt. 09/09/2025
NO.2, FOREST LANE, SULTANAPUR, M.G ROAD,
SOUTH DELHI, DELHI-110030

प्राप्त किया/ RECEIVED
केंद्रीकृत अपील निर्णयन कक्ष
CENTRALISED ADJUDICATION CELL
SEP 2025

Copy to:-

- The Dy./Asstt. Commissioner of Customs, Circle –D-3, Audit, JNCH.
- The Dy./Asstt. Commissioner of Customs, Adjudication Cell, (I), JNCH.
- Office copy
- Notice Board (for display)