

 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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F. No: S/26-Misc-118/2024-25 /Gr. IIG/JNCH
S/10-Adj-263/2025-26/Gr. IIG/JNCH

Date of Order: 11.09.2025
Date of Issue: 11.09.2025

SCN No.: 1084/2024-25/AC/GR.IIG/NS-I/CAC/JNCH

Date of SCN: 13.09.2024

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. 903/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH
आदेशसंख्या 903/2025-26/AC/Gr.IIG/NS-I/CAC/JNCH

Name of Importer/Party/Noticee: M/s. ABHISHEK ENTERPRISES (IEC:302067124)

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, 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. ABHISHEK ENTERPRISES (IEC:302067124) having address at M-107/5/1, MIDC AREA, WALUJ, AURANGABAD-431136 (hereinafter referred to as 'the Importer') had imported items viz. HIPS DISSIPATIVE SHEET (hereinafter referred to as 'the subject goods') vide Bills of Entry as mentioned Table-A below, classifying the same under CTH 3926 and the same has been cleared through Customs.

2 During the course of Post Clearance Audit of Bill of Entry, it is noticed that the Importer has imported the goods as mentioned in TABLE-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. The details of description of goods, Bill of Entry, assessed IGST amount, are as per Table-A

3. After going through imported goods descriptions, IGST Notification No.01/2017-IT 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%. However, Importer paid IGST @12% as per Sl. No. 81 of Notification No. 01/2017 against the imported goods. For better appreciation, the relevant part of Notification 01/2017 is as below: -

IGST Schedule	Schedule Sr. No.	IGST Rate	Description of Goods
II	81	12%	Feeding Bottles
II	82	12%	Plastic Beads
III	111	18%	Other articles of plastics an 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 is @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 invokable in this case.

5. In view of above, a Consultative Letter No.2609/2021-22/C1 vide F.No: S/2-Audit-Gen- 283/2021-22/JNCH/C1 dated 26.11.2021 was issued to the Importer for

payment of short levied duty along with applicable interest and penalty (tabulated below in Table -A). 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, no reply or submission is given by importer in this regard, till date.

TABLE-A

BE no. & Date	Inv. No./Item No.	Description	AV (in Rs.)	IGST @12% (in Rs.)	IGST @18% (in Rs.)	Differential IGST (in Rs.)
4958031 dt. 18.09.2019	01/01	HIPS DISSIPATIVE SHEET(ITEM CODE- BPSW2407) (CAPTIVE CONSUMPTION)	1,82,000.0	25,443.6	38,165.4	12,721.8

The total assessable value of the BE items so imported is 1,82,000/- and it appears that a short levy of IGST amounting to Rs. 12,722/- (as detailed mentioned above) is recoverable from the Importer along with applicable interest and penalty.

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).

7.4 Section 46- [Entry of goods on importation, subsection 46(4)].

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

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

7.7 Section 114A-(Penalty for short-levy or non-levy of duty in certain cases)

7.8 Section 117- (Penalties for contravention, etc., not expressly mentioned).

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. ABHISHEK ENTERPRISES (IEC:302067124) was hereby called upon to show cause 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. **12,722/- (Twelve thousand seven hundred twenty-two 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. 1,82,000/- 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.

WRITTEN SUBMISSIONS AND RECORDS OF PERSONAL HEARING

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.

DISCUSSIONS AND FINDINGS

12. I have carefully gone through the facts of the case. I have carefully gone through the records of the case. The importer has filed a Bill of Entry (BE) bearing No. 4958031 **dated 18.09.2019** for the clearance of "HIPS DISSIPATIVE SHEET (ITEM CODE - BPSW2407) (CAPTIVE CONSUMPTION)". The Assessable value of the goods is Rs. 1,82,000/- and paid IGST @12% as per Serial No. 81 of Schedule II of Notification No. 01/2017 on these items.

13. I find that IGST applicable on the said item is 18% as per Sr. No. 111 of Schedule III of notification No. 01/2017 and IGST paid by the importer @12% as per Serial No. 81 of Schedule II of Notification No. 01/2017 is applicable to feeding bottles only. Therefore, I find that the importer has wilfully mis-declared the subject goods by way of wrong IGST Schedule for the purpose of getting monetary benefit by misclassification.

14. I find that, 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 as the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by wilful misclassification of the said goods in the Bill 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.

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. Thus, the imported goods in question are liable for confiscation under Section 111 (m) of the said Act. For the above act of deliberate omission and commission, the importer has rendered the goods liable to confiscation under Section 111 (m), the Importer, M/s. ABHISHEK ENTERPRISES (IEC:302067124) is also liable to penal action u/s 112(a) and/or 114A 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.

17. I find that the importer has not paid the duty difference within 30 days as per Section 28(5) of the custom Act, 1962 the proceedings in respect of the said SCN dated 09.09.2024 cannot be concluded in accordance to Section 28(5) read with section 28(6) of the Customs Act 1962 and thus the imported goods are still liable for confiscation under Section 111 (m) of the said Act and accordingly, the Importer, M/s. ABHISHEK ENTERPRISES (IEC:302067124) 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. 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 however, the goods imported vide bill of entry mentioned in Table-A, to SCN 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"*

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. ABHISHEK ENTERPRISES (IEC:302067124) for the imported goods mentioned of the Bill of Entry No. 4958031 **dated 18.09.2019** as detailed in Table -A to SCN, and order to re-assess the goods with IGST @ 18% as per Sr. No. 111 of Schedule III of Notification No. 01/2017.
- ii. I confirm the demand of differential IGST of **Rs. 12,722/- (Rupees Twelve Thousand Seven Hundred Twenty-Two Only)** on M/s. ABHISHEK ENTERPRISES (IEC:302067124) 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. 1,82,000/- (Rupees One Lakh Eighty-Two Thousand 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. 18000/- (Rupees Eighteen Thousand only)** under section 125 of the Customs Act, 1962 in lieu thereof.
- iv. I impose a penalty of **Rs. 12,722/- (Rupees Twelve Thousand Seven Hundred Twenty Two only)** with applicable interest on the importer under Section 114A of 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 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 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 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.

(Raj Kumar Mishra)

Assistant Commissioner of Customs
Appraising Group-IIG, JNCH, NS-I

To

M/s Abhishek Enterprises (IEC 302067124) EM986087037FN, 4.11/9/2028
M-107/5/1, MIDC AREA, WALUJ, AURANGABAD-431136.

Copy to;

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

