



**OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-I),
सीमाशुल्क आयुक्त का कार्यालय (एनएस -I)**

**NHAVA-SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE,
न्हावा-शेवा, जवाहरलाल नेहरू कस्टम हाउस,
TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA - 400 707.
ताल-उरण, जिला- रायगढ़, महाराष्ट्र - 400 707**

F. No. S/26-Misc-151/2024-25/Gr. II (C-F)

Date of order:23.09.2025

F. No. S/10-Adj-31/2025-26 Gr II(C-F)

Date of issue:23.09.2025

SCN No.1340/2024-25/AC/Gr.II(C-F)/NS-I/CAC/JNCH Dated 30.10.2024

DIN :20250978NW000000DB07

Passes by: Shri Dinesh Kumar, Deputy Commissioner of Customs Gr. II(C-F).

Order No.955/2025-26/AC/Gr. II CF/NS-I/CAC/JNCH

Name of Party/Noticee/Importer: M/s. ABBOTT HEALTH CARE PRIVATE LIMITED,

मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962की धारा 128 (1) के तहत इस आदेश की संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982के अनुसार फॉर्म सी.ए. 1संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50रुपये का स्टॉप भी लगायाजायेगा जैसा कि न्यायालय फीस अधिनियम 1970की अनुसूची 1, मद 6के अंतर्गत निर्धारित किया गया है।
- इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5%का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।।

ORDER-IN-ORIGINAL

- 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, Sheva, Tal :Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
- 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.

M/s. Abbott Health Care Private Limited(IEC – 397006098) (hereinafter referred to as ‘the importer’) having their registered address at Unit No.3, Corporate Park, Sion Trombay Road, Chembur, Mumbai - 400 071, had imported items viz. “*Architech RV Ribbed Accessories of Clia kit*” etc. (hereinafter referred to as ‘the subject goods’) etc. vide bill of entry No 5633115 dt. 11.11.2019 as detailed in Table-B below and cleared by classifying the same under CTH 3926 and paid @12% IGST under Sr. No. 81 of Schedule-II of the IGST levy Notification No. of the IGST levy Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 as amended and Notification 43/2017-IT rate dated 14.11.2017 (hereinafter referred to as “the said notification”).

2. Goods falling under heading 3926 attract different IGST rates, as follows, under Schedule-II and schedule-III. The relevant provisions of IGST levy notification no. 01/2017- Integrated Tax (Rate) dated 28.06.2017, is tabulated as below:

TABLE-A

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 and articles of other materials of headings 3901 to 3914 (other than bangles of plastics, plastic beads and feeding bottles)

3. During the course of Post clearance Audit of Bills of Entry, it has been prima facie noticed that the importer has imported items viz. “*Architech RV Ribbed Accessories of Clia kit*” under CTH 3926 and paid IGST under serial number 81 of Schedule-II of Notification No. 01/2017 for paying IGST @ 12% instead of applicable serial number 111 of Schedule III of said Notification No. 01/2017 wherein IGST is @18%. The details of description of goods, Bills of Entry, applicability of corrected IGST amount, detailed in Table-B.

5. Accordingly, a Consultative Letter No.2608/2021-22/C1 vide F. No. 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. Vide the aforementioned Consultative letter, the Importer was advised to pay the Differential IGST (details mentioned in below Table-B) 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 IGST duty and interest along with penalty @ 15%. However, the importer has not responded till date.

TABLE B

BE No.	BE Date	Item No.	Description	Assessable Value	IGST Amount 12% (Paid)	IGST Amount 18%	Diff. IGST. (Recoverable)
5633115	11.11.2019		<i>Architech RV Ribbed Accessories of Clia kit</i>	857537	119883.7	179825.6	59941.85

7. Since the applicability of IGST @ 18% as per Sr. No. 111 of Sch-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 appeared that the importer had willfully mis-declared the subject goods by way of incomplete description for the purpose of importing the same , declaring IGST @12% as per serial number 81 of Schedule-II instead of 18% as per Sr. No. 111

of Sch-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 thereby paying lower duty than applicable and thus the provisions of Section 28 (4) are invokable in this case.

8. Relevant Legal Provisions: After the introduction of self-assessment vides 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.

9. Relevant legal provisions for recovery of duty that appeared to be evaded are reproduced here for the sake of brevity which are applicable in this instant case:

9.1 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.

9.2 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 willful 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).

9.3 SECTION 28AA- Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section

28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest, at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

9.4 SECTION 46. Entry of goods on importation, subsection 46(4) reads as:

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

9.5 Section 111 (Confiscation of improperly imported goods etc.) reads as: The following goods brought from a place outside India shall be liable to confiscation (m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.....;

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

"Any person,-

(a) who in relation to any goods does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act shall be liable,-

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher....."

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

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

9.8 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.]

10. Acts of omission and commission by the Importer:

10.1 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 appeared 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 willful misclassification of the 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.

10.2 It appeared 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 appeared 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 appeared 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 appeared liable to penal action under Section 112 (a) and /or 114 A and /or 114AA of the Customs Act, 1962.

11. Therefore, in terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s Abbott Health Care Private Limited (IEC – 397006098), was called upon to show cause to the Assistant Commissioner of Customs, Group II(C-F), N.S-I, JNCH, Nhava-Sheva, Taluka-Uran, District-Raigad, Maharashtra-400707, vide Show Cause Notice No. 1340/2024-25/AC/Gr.II(C-F)/NS-I/CAC/JNCH Dated 30.10.2024, as to why:

- i) The IGST rate of 12% claimed under Schedule II – Sr. No. 81 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 should not be rejected for goods covered under bills of entry mentioned in Table-B above and IGST rate of 18% under Schedule III – Sr. No. 111 of said notification should not be levied.
- ii) Differential IGST amount of **Rs. 59,942/- (Rupees Fifty Nine Thousand Nine Hundred Forty Two Only)** in respect of the items covered under Bills of entry mentioned in Table-B of this notice should not be demanded and recovered 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-B of this notice having a total assessable value of **Rs 8,57,537/- (Rupees Eight Lakh Fifty Seven Thousand Five Hundred Thirty Seven Only.)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv) Penalty on the duty specified in the consultative letter should not be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- v) Penalty should not be imposed on the importer under Section 112 (a) and/or 114 A and/or 114AA of the Customs Act, 1962.

DEFENCE SUBMISSIONS & RECORD OF PERSONAL HEARING

12. The Noticee has not filed any defence submission in the matter and when the personal hearing fixed on 05.06.2025 vide PH intimation notice dated 19.05.2025, the importer, vide letter dated 03.06.2025 has submitted that they have made the payment of short levied duty and interest on 23.12.2021 vide Challan No. HCM 2572 against Consultative Letter No. 2608/2021-22/C1 vide F.No. S/2-Audit-Gen-283/2021-22/JNCH/C1 dated 26.11.2021 and submitted their response on 24.12.2021 and requested for dropping the SCN issued in the matter.

DISCUSSION & FINDINGS

13. I have carefully gone through the facts of the case. I find that the importer had imported Architech RV Ribbed Accessory of CLIA Kit and classified the same under CTH 3926 vide the Bills of Entry No. 5633115 dated 11.11.2019. During the course of Post Clearance Audit of Bills of Entry, it has been noticed that importer has paid the IGST @ 12% under Sr. No. 81 of the Schedule-II of the IGST Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 on the subject goods. However, the concessional rate of IGST @12% is applicable only for the Feeding Bottles. The subject goods are more appropriately leviable to IGST @ 18% under Sr. No. 111 of the Schedule-III of the IGST Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017. Accordingly, the differential duty on above discrepancies has been worked out to be Rs.59,942/- and the importer vide Consultation Letter No. 2608/2021-22/C1 vide F.No. S/2-Audit-Gen-283/2021-22/JNCH/C1 dated 26.11.2021 was advised to pay the same alongwith interest, penalty.

14. Thereafter, the Importer has paid the differential duty Rs. 59,942/- along with interest of Rs. 19,066/- vide Manual Challan No. HCM 2572 and HC 2573 both dated 23.12.2021 respectively. However, the importer has not paid the penalty. Vide letter dated 23.12.2021, the importer had informed the Department about the above payments and requested to close the matter.

15. In reply to PH Notice dated 19.05.2024, the Noticee has submitted that they have made the short levied duty and interest payment on 23.12.2021 and submitted response to Audit on 24.12.2021 and prayed that proceeding initiated vide the impugned SCN to be dropped in entirety. In this regard, I find that the importer has not paid the penalty and as such the case cannot be closed.

16. From the above facts it is evident that the importer has claimed the benefit of concessional IGST of 12% which was applicable to Feeding Bottles. The importer was well aware that the goods imported by them i.e. CLIA Kits were not Feeding Bottles and despite it they had claimed the concessional rate of IGST. It clearly shows that the importer has consciously evaded Customs duty to the tune of Rs.59,942/- by suppressing the exact nature of the goods.

17.1 I find that in terms of sub-section (1) of Section 46 of the Customs Act, 1962, the importer of any goods other than goods intended for transit or transshipment is required to make entry thereof by presenting electronically to the proper officer, a Bill of Entry for home consumption or warehousing in the prescribed form. Further, sub-section (4) of Section 46 requires the importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry.

17.2 Further, the noticee having filed the bill of entry on self assessment basis under Section 17(1) was required to furnish correct information in the bill of entry. The law casts duty on the importer to declare true and correct information of the goods while filing the bill of entry and self assess the duty accordingly. Under self-assessment regime, importer need to be doubly sure that their claim is legally correct. In this regard, I also draw the attention of the Noticee on Para 1.3 of Chapter 1 of the Customs Manual on Self-Assessment 2011' which provides that Importers/Exporters who are unable to do the Self-Assessment because of any complexity, lack of clarity, lack of information etc. may exercise the following options:

- (a) Seek assistance from Help Desk located in each Custom Houses, or;
- (b) Refer to information on CBEC/ICEGATE web portal (www.cbic.gov.in), or;

(c) Apply in writing to the Deputy/Assistant Commissioner in charge of Appraising Group to allow provisional assessment, or;

(d) An importer may seek Advance Ruling from the Authority on Advance Ruling, if qualifying conditions are satisfied.

Para 3 (a) of Chapter 1 of the above Manual further stipulates that the Importer/Exporter is responsible for Self-Assessment of duty on imported/exported goods and for filing all declarations and related documents and confirming these are true, correct and complete. Under para-2.1 of Chapter-1 of the above manual, Self Assessment can result in assured facilitation for compliant importers. However, delinquent and habitually non compliant importers/ exporters could 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 provision under the Customs Act, 1962 or the Allied Acts.

17.3 Therefore, in the case, there is clear violation of these provisions as the importer has not self-assessed the goods to correct rate of duty. In the event of any violation, the importer is liable for the consequences under the Customs Act. The importer has paid the IGST @ 12% by availing ineligible notification. I find that the importer was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the goods by wrongly paying IGST @ 12% instead of 18% as per discussion made supra. In the instance case, the importer intentionally abused the faith placed upon it by the law of the land. Therefore, the importer has wilfully violated the provisions of Section 17(1) of the Customs Act in as much as importer has failed to correctly self assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Accordingly I have no option but to conclude that the importer has wrongly availed the benefit of concessional rate of IGST of 12% under Sl. No. 81 of schedule II of the IGST Notification No. 01/2017 by giving wrong impression that the imported goods are Feeding Bottles. Therefore, I find that the importer has wilfully mis-declared the exact nature of subject goods by way of availing benefit of concessional duty with a sole intention of getting monetary benefit by misdeclaration.

17.4 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 mis-declaration of the said goods in the Bills of Entry during self-assessment. Therefore, invocation of extended period is fully justifiable in the case and 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.

18 Now coming to the question as to whether the impugned goods are liable for confiscation, I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry made under this act. In instant case, Importer has claimed the benefit of concessional IGST under Sl. No. 81 of the Schedule II of the Notification No. 01/2017 dated 28.06.2017 which was not available for the imported goods. The benefit of concessional IGST was available to Feeding Bottles but the importer had availed the benefit for imported CLIA Kits. This act is clearly an act of misdeclaration of the origin of goods resulting in less payment of duty. Hence, I find that the issue of confiscation of the impugned goods under Section 111(m) is justifiable and sustainable. However, I find that the goods imported vide the above-said Bill of Entry are not available for confiscation, but I rely upon the Order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgement as below:

"23. 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 regularized, 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 authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III 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 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."

15 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertilchem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the Importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I find that the impugned goods having Assessable Value of Rs.8,57,537/- are liable for confiscation under Section 111(m) and the present case merits imposition of Redemption Fine.

16. 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 of applicable IGST @ 18% as discussed above and intentionally availed the wrong benefit of concessional IGST Notification with malafide intention to evade duty. Hence, the Customs duty (IGST) amounting to Rs.59,942/- 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 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 of BCD 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 Customs Act, 1962. Towards imposition of penalty under Section 112(a) of the Act. I find that same is not imposable in terms of fifth proviso to Section 114A of the Act, ibid.

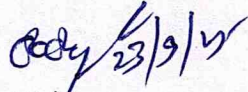
17. Hence, I hold accordingly:

ORDER

- i. I reject the self-assessment of BE No. 5633115 dated 11.11.2019 under IGST rate of 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 covered under Table-A and order for re-assessment under IGST rate of 18% under Schedule III- Sr. No. 111 of said notification.

- ii. I confirm the demand of differential IGST duty amounting to Rs. 59,942/- (Rupees Fifty Nine Thousands Nine Hundred Forty Two Only) on M/s. Abbott Health Care Private Limited(IEC – 0397006098) under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The importer has already paid the differential IGST amounting to Rs. 59942/-& along with interest Rs. 19066/- vide Manual Challan No. HC 2573 & HC 2572 both dated 23.12.2021. Therefore, I order to appropriate the same against the above confirmed duty and interest.
- iii. I hold the impugned goods imported under BE No. 5633115 dated 11.11.2019 , having total assessable value of Rs 8,57,537/- (Rupees Eight Lakh Fifty Seven Thousand Five Hundred Thirty Seven Only.) liable for confiscation under Section 111(m) of the Customs Act, 1962. I order to impose a Redemption Fine of Rs. 85,000/-(Rupees Eighty Five Thousand Only) under Section 125 of the Customs Act, 1962 in lieu of confiscation. The same shall be recovered from M/s. Abbott Health Care Private Limited(IEC – 0397006098).
- iv. I impose a penalty equal to the sum of differential duty and interest of Rs. 79,008/- (Rupees Seventy Nine Thousands and Eight Only) as per Section 28AA of the Customs Act, 1962 on importer M/s. Abbott Health Care Private Limited(IEC – 0397006098) under section 114A of the Customs Act, 1962. However, the importer has an option to avail the benefit of reduced penalty @ 25% under the first proviso to section 114A of the Customs Act, 1962 if the same is paid within the period of 30 days from the receipt of this order.
- v. I refrain from imposing penalty under section 112 (a) of the Customs Act, 1962, as I have already imposed penalty under section 114A of the Customs Act, 1962.

20. This order is issued without any prejudice to any other action that may be taken against the said goods/notice and /or against any other firm/ person concern under the provision of Custom Act, 1962 and are any other law for the time being in force, in India.


(दिनेश कुमार)

उप आयुक्त, सीमा शुल्क,

मूल्यांकन समूह II (सी-एफ), एनएस-1, जेएनसीएच

To,

M/s. ABBOTT HEALTH CARE PRIVATE LIMITED,
Unit No.3, Corporate Park, Sion Trombay Road,
Chembur, Mumbai - 400 071.

Copy to: -

1. The Dy./Asstt. Commissioner of Customs, CHS, JNCH
2. The Dy./Asstt. Commissioner of Customs, CRRC, JNCH.
3. The Dy./Asstt. Commissioner of Customs, CRAC, JNCH.
4. The Dy./Asstt. Commissioner of Customs, Audit Commissionerate, JNCH
5. The Dy./Asstt. Commissioner of Customs, CAC, JNCH.
6. The Dy./Asstt. Commissioner of Customs, EDI, JNCH.
7. Office copy

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for the company's financial health and for providing reliable information to stakeholders.

2. The second part outlines the specific procedures for recording transactions. It details the steps from initial entry to final review, ensuring that all data is captured correctly and consistently.

3. The third part addresses the role of the accounting department in overseeing these processes. It highlights the need for regular audits and the implementation of internal controls to prevent errors and fraud.

4. The fourth part discusses the impact of these practices on the company's overall performance. It notes that accurate record-keeping leads to better decision-making and improved financial stability.

5. The fifth part provides a summary of the key points and reiterates the commitment to transparency and accuracy in all financial reporting.

W. H. H. H.