OFFICE OF THE PR. COMMISSIONER OF CUSTOMS (NS-I),
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
DIST- RAIGAD, MAHARASHTRA – 400 707.

F. No. S/26-Misc-142/2024-25/Gr. II (C-F) Date of order:23.09.2025
F. No. S/10-Adj-34/2025-26 Gr II(C-F) Date of issue:23.09.2025
SCN No.1426/2024-25/AC/GR. II(C-F)/NS-I/CAC/JNCH Dated 29.11.2024

DIN :20250978NW0000520495

Passes by: Shri Dinesh Kumar, Deputy Commissioner of Customs Gr. II(C-F).
Order-in-Original No.957/2025-26/AC/Gr. II CF/NS-I/CAC/JNCH
Name of Party/Noticee/Importer: M/s.Foseco India Ltd. (IEC: 0388030054)

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 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 केरूप में 1.50रुपये मात्र का स्टांप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी । यदिइस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50रुपये का स्टांप भी लगायाजायेगा जैसा कि न्यायालय फीस अधिनियम 1970की अनुसूची 1, मद 6के अंतर्गत निर्धारित किया गया है ।

3. 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

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, 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.

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.Foseco India Ltd. (IEC: 0388030054) having address at Gat No. 922 & 923, Sanaswadi, Tal-Shirur, Pune, Maharashtra-412208 (hereinafter referred to as 'the importer') had cleared their imported item viz "Rheotec 204P 575-LB MTL-DR (Additive) (Qty: 2300 Lb)'' classified under tariff heading CTH 38249990 having origin of the USA and have claimed the benefit under Sr. No.250 of Notification No. 50/2017-Cus dated 30.06.2017 and paid the BCD @ 7.5% vide Bills of Entry as below.

BE No	BE Date	Ass.Value	Duty Payable @17.5%	Duty Paid @ 7.5%	Diff Duty
7947394	19.06.2020	125570.13	51125.87	34826.87	16,299/-
				Total	16,299/-

2. During the course of Post Clearance Audit of Bills of Entry, it has been noticed that the said goods covered under CTH 38249990, attract the effective rate of BCD @ 7.5% vide Sr.No.250 of the Notification No. 50/2017-cus dated 30.06.2017. However, for goods originating in the USA covered under CTH 38249990, the effective rate of BCD is 17.5% as per notification No. 48/2018-Cus., dated 20.06.2018 (w.e.f. 04.08.2018). The relevant Sr No. 4 (ii) of Para 3 of the Notification 48/2018 –Cus dated 20.06.2018 is reproduced below.

In the Chapter 38, for the entry in column (4) occurring against-

(i) Tariff item 38220090, the entry '20%' shall be substituted

(ii) Tariff item 38249990, the entry '17.5%' shall be substituted

Further, the entry 250A is inserted against the goods 'Binders for Foundry Moulds' under CTH 38249990 by Notification No. 49/2018-Cus. Dated 20.06.2018 and effective rate of BCD@ 7.5% was made applicable. However, condition at Para 2 of the Notification 49/2018 dated 20.06.2018 states that 'After the first proviso, the following provision shall be inserted with effect from the 4th day of August, 2018 namely: -

'provided further that nothing contained in entries against serial numbers 14, 21B,21C,21D,24A,24B,26A,32A,177,177A,249A,250A,371A,371B,376A, and 377A of the said table, shall apply to goods originating in the United States of America'.

3. Further, Notification No. 25/2019-Cus dated 06.07.2019 (amendment of Principal Notification No 50/2017-Cus. Dated 30.06.2017) provided that 'Sr No 250A, for the entry in column (3), the entry "All goods" shall be substituted.

On the basis of the fact as stated above, the goods covered under CTH 38249990 attract the effective rate of BCD @17.5% on or after 04.08.2018 provided that goods originated form USA. Here the applicability of Notifications issued i.r.o CTH 38249990 is tabulated below for better understanding.

Sr No	Notification No& date	Effective Date	Condition
1	50/2017 dated 30.06.2017	30.06.2017	BCD was leviable @7.5% on all goods under CTH 3824 (as per Sr No. 250 of the Notn 50/2017)
2	48/2018 dated 20.06.2018	20.06.2018	Vide this Tariff amendment Notification, Customs Tariff of CTH 38249990 has been amended from 7.5% to 17.5% As per Point No 4(ii) of the Tariff amendment Notification 48/2018.
3	49/2018 dated 20.06.2018	04.08.2018	Vide this amendment Notification, amendment was done in principal Notification i.e Notification No 50/2017 dated 30.06.2017 and Sr No. 250A was inserted for the goods 'Binders for foundry moulds' under CTH 38249990 (Point No.10) and BCD was made applicable @7.5% for CTH 38249990 (Binders for foundry moulds). However, as per Para 2 of the Notification No. 49/2018 dated 04.08.2018 the following condition was inserted:

			After the first proviso, the following proviso shall be inserted with effect from the 4th day of August,2018 namely- "Provided further that nothing contained in entries against serial numbers 14,21B,21C,21D,24A,24B,26A,32A,177,177A,249A,250A,371A,371B,376A and 377A of the said table, shall apply to goods originating in the United States of America".
4	25/2019	06.07.2019	Vide this amendment notification 'Binders for foundry moulds' against Sr No.250A was replaced to 'All goods'. Point 16 of the Notification states that "Against S.No.250A, for the entry in column (3), the entry "All goods" shall be substituted.

In view of above, a consultative letter No.2577/2020-21, vide F.No. S/2-Audit-Gen-363/2020-21/JNCH/B-1 dated 18.11.2021 was issued to the Importer requesting to pay the differential duty of Rs. 16299/- (Sixteen Thousand Two Hundred and Ninety Nine only) against the BE as mentioned in 'Table-I"

4. The Importer has neither paid the differential duty along with interest and penalty nor submitted any reply till date. In view of the above facts and going through the Notifications issued i.r.o CTH 38249990 it is clear that the goods imported vide the said Bill of Entry covered under CTH 38249990 attracts the BCD@17.5% on or after 04.08.2018. In the instant case the BE 5239012 dated 10.10.2019 was filed in 2019 and hence, the BCD @17.5% would be applicable.

5. Whereas, consequent upon amendment to the Section 17 of the Customs Act,1962 vide Finance Act, 2011, self-assessment has been introduced in customs clearance, Section 17 of the Customs Act, effective from 08.04.2011 (CBIC Circular No.17/2011 dated 08.04.2011) provides for self-assessment of duty on imported goods by the importer himself by filing a BE in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a BE electronically to the proper officer. As per Regulation 4 of Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration in EDI system through ICEGATE. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefits of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the importer more specifically in a RMS facilitated Bill of Entry, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

6. Thus, the act of the importer appeared to be misleading to clear the subject goods under effective rate of BCD @ 7.5% vide Sr.No.250 of the Notification No. 50/2017-Cus. dated 30.06.2017. The entry 250A is inserted after Sr No. 250 of the Notification 50/2017 dated 30.06.2017 by amending Notification No.49/2018-Cus. dated 20.06.2018. However, for 'Rheotec 204P 575-LB MTL-DR (Additive)' originating from USA, covered under CTH 38249990, the effective rate of BCD was @17.5% as per Notification No. 48/2018-Cus dated 20.06.2018 (w.e.f 04.08.2018). This act of the importer has resulted in short payment amounting to Rs. 16299/- (Sixteen Thousand Two Hundred and Ninety-Nine only).

7. In view of above, it is clear that the benefit of the Notification no.50/2017 dated 30.06.2017, 48/2018, 49/2018 both dated 20.06.2018 and 25/2019 dated 06.07.2019 availed by the importer does not appear to be acceptable. And thus, the higher rate of BCD@ 17.5% was applicable on the goods imported form USA under CTH 38249990.

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

8.1 **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.

8.2 **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 willful 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.

Explanation- For the purposes of this section, "relevant date" means-

(a) In a case where duty is not paid of short-levied or short-paid or interest is not charged. The date on which the proper officer marks an order for the clearance of goods.
(b) In a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;
(c) In a case where duty or interest has been erroneously refunded, the date of refund;
(d) In any other case, the date of payment of duty or interest.

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.
(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.

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

"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 and shall in support of such declaration, produce to the proper officer the invoice, if any. relating to the imported goods"

8.5 **Section 111**- (Confiscation of improperly imported goods etc.) read 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.....;

8.6 **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"

8.7 **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;

(iii) 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. Acts of Omission and Commission by the importer: -

The importer claimed benefit under CTH 38249990, which attract the effective rate of BCD@7.5 % vide Sr.No. 250 of the Notification 50/2017-Cus dated 30.06.2017. However, for 'Araldite DY-E (Adhesives)" covered under CTH 38249990, the effective rate of BCD was enhanced from 7.5% to 17.5% as per Notification No. 48/2018 dated 20.06.2018 .the entry 250A is inserted against CTH 38249990 vide amending Notification No. 49/2018-Cus dated 20.06.2018 but the same was not applicable for the goods originating from USA (as per condition mentioned in para 2 of Notification No.49/2018 dated 20.06.2018) after that the Notification No. 25/2019 dated 06.07.2019 was issued and Vide this amendment notification 'Binders for foundry moulds' against Sr No.250A was replaced to 'All goods'. Point 16 of the Notification states that "Against S.No.250A, for the entry in column (3), the entry "All goods" shall be substituted. Hence, the effective rate of BCD was @17.5% for the goods covered under CTH 38249990. Thus, it appeared that the importer has engaged in suppression of facts to evade the customs duty. Therefore, the provision of Section 28(4) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short paid or erroneously refunded, or interest by reason of collusion, willful mis-statement and suppression of facts, is squarely applicable in this case. Hence, the differential duty amount of Rs. 16299/- (Sixteen Thousand Two Hundred and Ninety-Nine only) is recoverable from the importer under the provision of 28(4) of CA,1962 along with applicable interest and penalty under relevant section.

10. Therefore, in exercise of the powers conferred by Section 28(4) of the Customs Act, 1962, **M/s.Foseco India Ltd. (IEC: 0309013097)** having address at Gat No. 922 & 923, Sanaswadi, Tal-Shirur, Pune, Maharashtra-412208 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 F.No. 1426/2024-25/AC/GR. II(C-F)/NS-I/CAC/JNCH Dated 29.11.2024 within 30 days of the receipt of this notice as to why:

(i) The benefit of Sr. No. 250 of the Notification No. 50/2017-cus dated 30.06.2017 by claiming BCD @ 7.5% on the imported goods vide BE No. 7947394, dated 19.06.2020 covered under CTH 38249990 should not be rejected;

(ii) The effective rate of BCD 17.5% on the imported goods vide BE No. 7947394, dated 19.06.2020 originating in the USA covered under CTH 38249990 should not be levied as per notification No. 48/2018-Cus., dated 20.06.2018 (w.e.f. 04.08.2018);

(iii) Differential duty amounting **Rs. 16,299/- (Sixteen Thousand Two Hundred and Ninety-Nine only)** for the BE as mentioned in Table-I should not be recovered from the importer under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

(iv) The subject goods should not be confiscated under section 111(m) of the Customs Act,1962.

(v) The applicable Interest on the Differential Duty amount specified above should not be recovered from them in terms of section 28AA of the Customs Act, 1962;

(vi) Penalty should not be imposed on them under section 112(a) and section 114A of the Customs Act, 1962.

DEFENCE SUBMISSIONS & PERSONAL HEARING

11.1 In response to PH Notice dated 19.05.2025, the Noticee vide letter dated 04.06.2025 has informed that they would like reply to referred SCN as we have paid duty difference Rs.16,299/- plus interest amount of Rs.12,131/- total Rs.28,430/- vide Challan 1062551715 dated 03.06.2025 and submitted copy challan.

11.2 Thereafter, importer vide letter dated 23.06.2025 (recd. On 06.08.2025) has informed that they have paid penalty of Rs.7,110/- vide Challan No. 1201790208 dated 05.06.2025 and requested to close the SCN proceedings.

DISCUSSION AND FINDINGS

12.1 I have carefully gone through the facts of the case and other relevant documents available on record. I find that the importer in the response of the SCN has paid differential duty of Rs.16,299/- alongwith interest 12,131/- total Rs.28430/- vide Challan No. 7947394 dated 03.06.2025. Subsequently, the importer has also paid a penalty @ 25% of Rs.7,110/- vide Challan No. 1201790208 dated 05.06.2025. However, since the importer has not paid the duty and penalty as sought in the SCN within 30 days proceeding against the importer cannot be concluded under section 28(6) of the Customs Act, 1962.

12.2 I find that the importer had cleared imported item viz "Rheotec 204P 575-LB MTL-DR (Additive) (Qty: 2300 Lb)'' vide BE No. 7947394 dated 19.06.2020 under tariff heading CTH 38249990. The goods were of the USA origin and cleared by availing the benefit under Sr. No. 250 of Notification No. 50/2017-Cus dated 30.06.2017 and thereby paid the BCD @ 7.5%. I further find that vide the tariff amendment Notification No. 48/2018-Cus dated 20.06.2018 the effective rate of BCD was enhanced from 7.5% to 17.5% for CTH 38249990. The relevant Sr No. 4 (ii) of Para 3 of the Notification 48/2018 –Cus dated 20.06.2018 is reproduced below.

In the Chapter 38, for the entry in column (4) occurring against-

(i) Tariff item 38220090, the entry '20%' shall be substituted

(ii) Tariff item 38249990, the entry '17.5%' shall be substituted

12.3 I further find that condition at Para 2 of the Notification 49/2018 dated 20.06.2018 states that 'After the first proviso, the following proviso shall be inserted with effect from the 4th day of August, 2018 namely;-

'provided further that nothing contained in entries against serial numbers 14, 21B, 21C, 21D, 24A, 24B, 26A, 32A, 177, 177A, 249A, 250A, 371A, 371B, 376A and 377A of the said table, shall apply to goods originating in the United States of America'.

12.4 Thereafter vide Notification No. 25/2019-Cus dated 06.07.2019 (amendment of Principal Notification No 50/2017-Cus. Dated 30.06.2017) provided that 'Sr No 250A, for the entry in column (3), the entry "All goods" shall be substituted.

12.5 From the above it is evident that the goods which were originated in USA and covered under CTH 38249990 were attracted the effective rate of BCD @17.5% on or after 04.08.2018.

In view of the above, it is clear that the subject goods 'Rheotec 204P 575-LB MTL-DR (Additive)' covered under CTH 38249990 were leviable to the BCD@17.5%. However, the importer had cleared these goods by paying lower rate of BCD @ 7.5% and thereby evaded Customs duty to the tune of Rs.16,299/-

13.1 I find that in terms of sub-section (1) of Section 46, 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.

13.2 Further, the noticee having filed the bill of entry on self assessment basis under Section 17(1) is 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.

13.3 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 BCD @ 7.5% 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 BCD @ 7.5% instead of 17.5% as per discussion made supra. However, in the instance case, the importer intentionally abused this 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 willfully 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 under Sl. No. 250A of Notification No. 50/2017-Cus. The goods originated from USA were not eligible for the claimed benefit and thereby the importer had paid BCD @ 7.5% instead of 17.5%. While claiming the BCD @7.5%, the importer has given wrong impression that goods are not of US origin. Therefore, I find that the importer has wilfully mis-declared the origin of subject goods by way of availing wrong benefit of notification with sole intention of getting monetary benefit by misdeclaration.

13.4 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.

14 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 under Sl. No. 250A of the Notification No. 50/2017-Cus dated 30.06.2017 which was not available for the goods originating in the United State of America. The imported goods were originating in the United State of America. However, despite it the importer has availed the benefit under Sl. No. 250A of the Notification No. 50/2017-Cus dated 30.06.2017. 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 Fertichem 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.1,25,571/-** 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 BCD @ 17.5% as discussed above and intentionally availed the wrong benefit of Notification with malafide intention to evade duty. Hence, the Customs duty amounting to **Rs.16,299/-** 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

17.1 I order to reject the self-assessment of the impugned goods done by the Importer M/s Foseco India Ltd. (IEC: 0309013097) under Serial No. 250 of the Notification No. 50/2017-Cus. Dated 30.06.2017 as amended on the impugned goods and I order to re-assess the same with BCD @ 17.5%. As a result, I confirm the demand of differential Customs duty amounting Rs. 16,299/- (Sixteen Thousand Two Hundred and Ninety-Nine only) on the importer M/s Foseco India Ltd. (IEC: 0309013097) under section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act 1962. Since the importer has already paid differential duty of Rs.16,299/- alongwith interest 12,131/- total Rs.28430/- vide Challan No. 7947394 dated 03.06.2025, I order to appropriate the same against the confirmed duty and interest.

17.2 I order to confiscate the goods valued at **Rs.1,25,571/ (Rupees One Lakh Twenty Five Thousand Five Hundred and Seventy One only)** under Section 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, I impose a Redemption Fine of Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) under Section 125 of the Customs Act, 1962. The same is to be paid by M/s Foseco India Ltd. (IEC: 0309013097)

17.3 I hereby impose a penalty equal to the sum of differential duty of **Rs. 16,299/- (Sixteen Thousand Two Hundred and Ninety-Nine only)** and applicable interest on differential duty as per Section 28AA of the Customs Act, 1962 on importer M/s Foseco India Ltd. (IEC: 0309013097) under section 114A of the Customs Act, 1962. However, since the importer has already deposited the duty, interest and 25% penalty i.e. Rs. 7,110/- (Seven Thousand One Hundred Ten only), I am inclined to give the benefit of reduced penalty of 25% as provided under first proviso to Section 114A of the Customs Act, 1962 and already deposited penalty amount of Rs. 7,110/- (Seven Thousand One Hundred Ten only is appropriated.

17.4 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.

18. 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.

23/9/25

(दिनेश कुमार)

उप आयुक्त, सीमा शुल्क,

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

To,
M/s Foseco India Ltd. (IEC: 0309013097)
Gat No. 922 & 923,
Sanaswadi, Tal-Shirur,
Pune, Maharashtra-412208

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