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-179/2024-25/Gr. II (C-F) Date of order:23.09.2025
F. No. S/10-Adj-32/2025-26 Gr II(C-F) Date of issue:23.09.2025
SCN No.1758/2024-25/AC/Gr.IICF/ NS-I/CAC/JNCH dated 04.03.2025

DIN :20250978NW0000020782

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

Order-in-original No.954/2025-26/AC/Gr. II CF/NS-I/CAC/JNCH
Name of Party/Noticee/Importer: M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q)

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

On the basis of the Analytics Report- 22 /2021-22 dated 15.06.2021 regarding wrong claim of concessional BCD @ 7.5% under Sr. No. 231 of Notification No 50/2017-Customs dated 30.06.2017 meant for specified goods falling under heading 3206 pertaining to imports made by various importers through JNCH (INNSA1) was analyzed in detail.

2. While analysing the data, it was observed that M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q) (hereinafter referred to as 'the Importer') having registered address at Office 602, B Wing, Ashok Enclave, Chincholi Road, Link Road Junction, Malad West, Mumbai, Maharashtra have imported goods having description as " Pearl Pigment and preparations based on Titanium Dioxide" under CTH 3206 49 90 (as detailed mentioned in Table- A) claiming concessional rate of Basic Customs Duty (BCD) @ 7.5% under Sr. No.231 of Notification No.50/2017-Customs dated 30.06.2017 in respect of goods which were not eligible for the same. However, on scrutiny it appeared that the subject goods are correctly classifiable under Customs Tariff Item 32061900 attracting Basic Customs Duty @ 10% as the claimed duty exemption in terms Sr. No. 231 of Notification No.50/2017-Customs dated 30.06.2017 is not available for such goods.

3. The relevant extracts of Sr. No. 231 of the Notification No.50/2017-Customs dated 30.06.2017 reads as under:

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
231.	3201, 3202, 3203, 3204,3205 00 00, **3206** (except 3206 11 and **3206 19 00**) or 3207	All goods	7.5%	-	-

4. From a reading of the entry at Sr. No. 231 of the Notification No.50/2017-Customs dated 30.06.2017 as reproduced above, it is clear that concessional rate of duty in terms of the same is **not available** to goods classifiable under sub heading **320611** and tariff item **32061900.** In this context, the relevant part of tariff heading 3206 is reproduced as below:

3206	OTHER COLOURING MATTER; PREPARATIONS AS SPECIFIED IN NOTE 3 TO THIS CHAPTER, OTHER THAN THOSE OF HEADINGS 3203, 3204 OR 3205; INORGANIC PRODUCTS OF A KIND USED AS LUMINOPHORES, WHETHER OR NOT CHEMICALLY DEFINED
	- Pigments and preparations based on titanium dioxide:
3206 11	-- Containing 80% or more by weight of titanium dioxide

calculated on the dry matter :

3206 11 10 --- Pearlsent pigment (titanium dioxide, coated micananeous and lustres pearl pigment) kg. 10% -

3206 11 90 --- Other kg. 10% -

3206 19 00 -- Other kg. 10% -

3206 20 00 - Pigments and preparations based on chromium compounds kg. *7.5% -

- Other colouring matter and other preparations:

3206 41 00 -- Utramarine and preparations based thereon kg. *7.5% -

3206 42 00 -- Lithopone and other pigments and preparations based on zinc sulphide kg. *7.5% -

3206 49 -- Other :

3206 49 10 --- Red oxide kg. *7.5% -

3206 49 20 --- Persian red kg. *7.5% -

3206 49 30 --- Yellow ochre kg. *7.5% -

3206 49 40 --- Bronze powder kg. *7.5%

-

3206 49 90 --- Other kg. *7.5% -

3206 50 00 - Inorganic products of a kind used as luminophores kg. *7.5% -

5. In view of the above, a Consultative letter vide **C.L. No. 1077 dated 18.11.2022.**was issued vide F.No. S/2-Audit-Gen-321/2022-23/JNCH/B2 for the Bills of Entry (as detailed mentioned in Table-A) advising the importer to pay the differential duty of Rs. 9555/-along with interest and penalty under Section 28 (4) of the Customs Act, 1962. The importer has not paid the differential duty along with interest and penalty under Section 28 (4) of the Customs Act, 1962. The effective payable duty was re-calculated and the redetermined duty payable has been worked out to **Rs. 9555/-**. The importer has not paid the differential duty along with interest and penalty under Section 28 (4) of the Customs Act, 1962.

Table A

BE No.	BE Date	AG	Declared CTI	Description of Good	Assessed Value	Duty Paid@27.735%	Duty Payable @30.98 %	Total Differential Duty
8647669	31-Aug-20	2C	3206 4990	62Z16369-BG PEARL GREEN PP (FOR CAPTIVE CONSUMPTION) BATCH NO P0120060146	17201.64	4770.8	5,329	558
8647669	31-Aug-20	2C	3206 4990	62Z16368-BG PEARL BLUE PP (FOR CAPTIVE CONSUMPTION) BATCH NOP0120060148	2770.86	768.5	858	90
8647669	31-Aug-20	2C	3206 4990	62R16559-BG PINK PEARL PPRO (FOR CAPTIVE CONSUMPTION) BATCHNO P0120050327	39575.4	10976.3	12,260	1,284

8647669	31-Aug-20	2C	32064990	62R16559-BG PINK PEARL PPRO (FOR CAPTIVE CONSUMPTION) BATCHNO P0120050327	10025.77	2780.6	3,106	325
8647669	31-Aug-20	2C	32064990	62Z16368-BG PEARL BLUE PP (FOR CAPTIVE CONSUMPTION) BATCH NOP0120060148	34635.74	9606.3	10,730	1,124
3191514	18-Mar-21	2C	32064990	62Z16368-BG PEARL BLUE PP (FOR CAPTIVE CONSUMPTION) BATCH NO.P0120120356	3304.75	916.6	1,024	107
3191514	18-Mar-21	2C	32064990	62Z16369-BG PEARL GREEN PP (FOR CAPTIVE CONSUMPTION) BATCH NO.P0120120354	91486.37	25373.7	28,342	2,969
3191514	18-Mar-21	2C	32064990	62Z16368-BG PEARL BLUE PP (FOR CAPTIVE CONSUMPTION) BATCH NO.P0120120356	91798.61	25460.4	28,439	2,979
3191514	18-Mar-21	2C	32064990	62Z16369-BG PEARL GREEN PP (FOR CAPTIVE CONSUMPTION) BATCH NO.P0120120354	3659.45	1014.9	1,134	119
				Total	**294458.59**	**81668.1**	**91223**	**9555**

6. Consequent upon the above notifications, it is amply clear that Sr. No. 231 of the BCD Notification No.50/2017-Customs dated 30.06.2017 grants concessional BCD @ 7.5 % for goods falling under heading 3206. However, it is noted that not all goods falling under heading 3206 are eligible for concessional BCD under the subject entry (Sr. No. 231). As a matter of fact, goods falling under **sub-heading 3206.11 and tariff item 3206.19.00** are not eligible for concessional BCD @ 7.5%, as being specifically excluded from the scope of entry 231.

7. It is seen from the above that "Pigments and preparations based on titanium dioxide" are appropriately classifiable under sub heading 3206.11 and tariff item 3206.19.00 depending upon the content of titanium dioxide present. It, therefore, follows that "pigment and preparations based on titanium dioxide" are specifically excluded from the scope of the entry at Sr. No. 231 of the Notification No.50/2017-Customs dated 30.06.2017. Consequently, such goods are not eligible for concessional BCD @ 7.5% and instead attract the tariff rate of BCD which is 10% ad-valorem.

8. It appeared that the impugned goods imported as mentioned in Table-A are nothing but "Pigments and preparations based on titanium dioxide'. These pigments contain Titanium dioxide; however, the importer **has not declared the percentage of titanium dioxide in the description** of goods even though, clearly titanium dioxide is an essential content in the goods, and its content is essential in determining the appropriate classification of the goods. Thus, the

importer supressed these facts and classified the goods under tariff item 32064990 to evade Customs duty. It is also observed that sub heading 320611 and tariff item 32061900 are pigments and preparations based on Titanium dioxide. The only difference being that while the former convers such pigments and preparations which contain 80% or more titanium dioxide, the latter covers such goods with Titanium Oxide content of below 80%. From the declared description of the imported goods it is not clear whether the goods contain titanium dioxide less than 80% or otherwise. However, as is clear from the entry at Sr. No. 231 of Notification No.50/2017 ibid exemption provided thereunder is not available to both goods under sub heading 320611 or under tariff item 32061900. In this case the importer has not declared the percentage of titanium dioxide, therefore considering that the goods having titanium dioxide percentage less than 80%, same are correctly classifiable under tariff item 32061900. In this manner, the importer has short paid duty amounting to **Rs. 9555/- (Rupees Nine Thousand Five Hundred and Fifty Five only)** as detailed in Table-A to this notice. It also appeared that the importer wilfully mis-stated the classification of the imported goods with the intent to avail under benefit of concessional rate of duty under Sr. No. 231 of notification 50/2017-Customs dated 30.06.2017. Consequently, the duty short paid is recoverable from the importer under section 28(4) of the Customs Act, 1962 read with Section 5 of the IGST Act, 2017 along with interest at applicable rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 and for the same reasons penalty is required to be imposed on them under Section 114A of the Customs Act, 1962. Further, that as the importer has mis-declared the classification of the imported goods and has availed undue benefit of Sr. No. 231 of Notification No.50/2017 ibid, it appeared that the imported goods are liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 and the importer is liable for penalty under Section 112 and/or 114 A ibid.

9. 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's (erstwhile CBEC) Circular No. 17/2011 dated 08.04.2011], provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, 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 bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 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 (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declared the correct classification, declaration, applicable rate of duty including IGST, value, benefit of exemption notifications 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 the RMS facilitated Bill of Entry, to declare the correct classification, description, value, notification benefit, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods.

10. As discussed above, it is the responsibility of the importer to give correct and complete description of the goods being imported in the Bills of Entry. In the instant case, the importer has assessed the impugned goods namely "pigments and preparations based on titanium dioxide" is

wrong classifying the same under Customs tariff item 3206 49 90 and paid BCD @ 7.5% availing BCD notification 50/2017-Customs dated 30.06.2017 of entry at Sr. No.231 and paid the IGST @ 18% under Schedule-III of the Notification No.01/2017-IGST (Rate) dated 28.06.2017. However, the subject goods which are correct classifiable under Customs tariff item 3206 19 00, liable to pay BCD @ 10% which resulted in short payment of BCD. It appeared that the importer has done the assessment wrongly with an intention to get financial benefit by paying lesser BCD under ineligible Sr. No. 231 of the Notification No. 50/2017-Customs dated 30.06.2017. Thus, the wrong assessment of goods under ineligible Sr. No. 231 of the said Notification has led to short payment of duty by the importer as detailed in the above. The wrong assessment of goods is nothing but suppression of facts with an intention to get financial benefit. Hence, it appeared that the importer has suppressed the facts, by wrong assessment of the impugned goods leading to short payment of BCD. As there is suppression of facts, extended period of five years can be invoked for demand of duty under Section 28 (4) of the Customs Act, 1962.

11. Legal provisions applicable in the case:

11.1 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 and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly. **Section 17 (Assessment of duty)**, subsection (1) 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.'

11.2 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. (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).'

11.3 Section 46 (Entry of goods on importation), subsection (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.'

11.4 Section 111 (Confiscation of improperly imported goods etc.) reads as:

'The following goods brought from a place outside India shall be liable to confiscation:

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;'

11.5 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, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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

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

11.6 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 willful 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.'

12. Therefore, in view of the above facts, it appeared that the importer has deliberately not paid the duty by willful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to Rs. **9555/- (Rupees Nine Thousand Five Hundred and Fifty Five only)**(as detailed in Table-'A'). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

13. Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer.

14. It appeared that the Importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(o) & 111(m) of the Customs Act, 1962.

15. It further appeared that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and/or 114A of the Customs Act. 1962.

16. Now, therefore, in exercise of the powers conferred by Section 28 of the Customs Act, 1962, the importer M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q) having registered address at Office 602, B Wing, Ashok Enclave, Chincholi Road, Link Road Junction, Malad West, Mumbai, Maharashtra was called upon to Show Cause to the Deputy/Asst. Commissioner of Customs, Appraising Group–2C, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka- Uran, District – Raigad, Maharashtra – 400 707, vide Show Cause Notice No. 1758/2024-25/AC/Gr.IICF/ NS-I/CAC/JNCH Dated 04.03.2025 as to why;

(i) The declared classification of the goods under tariff item 3206 49 90 as detailed in Table-A hereto should not be rejected and the same should not be classified under Customs tariff item 3206 19 00.

(ii) The benefit of duty exemption/concession in terms of Sr. No.231 of notification 50/2017-Customs dated 30.06.2017 in respect of the goods as discussed above should not be denied for the reasons stated therein and the said goods should not be charged to BCD tariff rate @ 10%.

(iii) The goods detailed in Table-A hereto of the total Assessable value **Rs. 294459 (Rupees Two Lakh Ninety Four Thousand Four Hundred and FiftyNine Only)-** should not be held liable for confiscation under the provisions of Section 111(o) & 111(m) of the Customs Act, 1962.

(iv) The total differential duty amounting to **Rs. 9555/- (Rupees Nine Thousand Five Hundred and Fifty Five only)** short paid as detailed in Table-A to this notice should not be recovered from them under Section 28(4) of the Customs Act, 1962..

(v) The applicable interest on the 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/or Section 114A of the Customs Act, 1962.

(vii)

DEFENCE SUBMISSIONS & PERSONAL HEARING

17. The importer has not replied to the Show Cause Notice so far. In order to comply with the principal of natural justice, personal hearings were fixed on 15.05.2025, 05.06.2025 & 22.07.2025. However, the importer has not attended the same.

DISCUSSION AND FINDINGS

18. I have carefully gone through the facts of the case and documents available on record. At the outset, I find that the importer had cleared the imported goods namely "Pearl Pigments and preparation based on Titanium Dioxide" by classifying the same under CTI 32064990 of the First Schedule of the Customs Tariff Act, 1975 and thereby they had claimed and availed the benefit

of concessional rate of basic customs duty @ 7.5% under Sr.No. 231 of Notification No.50/2017-Customs dated 30.06.2017. From the Sr. No. 231 of the Notification No.50/2017- Customs dated 30.06.2017, it is evident that it is applicable to the goods which are falling under heading 3201,3202,3203,3204,3205 00 00, 3206 (except 3206 11 and 320619 00) or 3207 only and the same is not available to goods classifiable under sub heading 320611 and tariff item 32061900. The importer had cleared the goods i.e. "Pearl Pigments and preparation based on Titanium Dioxide" under CTH 32064990. Whereas the contention of the department is that these goods are classifiable under 32061900 and therefore the subject goods are not eligible claimed benefit. The subject goods are pigment is also not disputed. Thus, the main issue involved in the matter is whether the subject goods imported by the importer are classifiable under CTI 32064990 as claimed by the importer or under 32061900 as contended by the audit. I find that the importer has neither responded to SCN nor attended the personal hearing. Thus, the SCN remains uncontested. I find that subsequent to issue of present SCN, the importer was duty bound to prove that they have neither mis-declared the goods nor misclassified the imported goods. However importer has failed to refute the allegation made in the SCN. From the nature of the goods, it appears that the impugned goods are nothing but "Pigments and preparations based on titanium dioxide'. These pigments contain Titanium dioxide; however, the importer **has not declared the percentage of titanium dioxide in the description** of goods even though, clearly titanium dioxide is an essential content in the goods, and its content is essential in determining the appropriate classification of the goods.

22. On careful perusal of the First Schedule to Customs Tariff Act, 1975 as reproduced in Para 4, I find heading 3206 covers the "Pigments and preparations based on titanium dioxide" and Sub-heading 320611 covers Pigments and preparations based on titanium dioxide; containing 80% or more by weight of titanium dioxide calculated on the dry matter and sub sub heading 32061900 covers other pigments and preparations based on titanium dioxide when the same is containing less than 80% by weight of titanium dioxide calculated on the dry matter. Since the goods in the present case appears to contain less than 80% Titanium Dioxide, the goods appears to be classifiable under CTI 32061900. From reading of entire heading 3206 of the First Schedule of the Customs Tariff Act, 1975, it is evident that the goods are broadly categorized in four categories i.e. (i) - *Pigments and preparations based on titanium dioxide* :(ii) - *Pigments and preparations based on chromium compounds* (iii) *Other colouring matter and other preparations and (iv) Inorganic products of a kind used as luminophores* and the importer had classified the goods in "sub heading 320649 which pertains to "*Other colouring matter and other preparations*". Thus, it is evident that the importer has consciously misclassified the goods under 32064990 though the goods based on Titanium Dioxide and the same being containing less than 80% by weight of titanium dioxide calculated on the dry matter is specifically covered under CTI 32061900 and according the goods are not eligible for concessional rate of basic duty @ 7.5% under Sr. No. 231 of the Customs Notification No. 50/2017 as discussed above.

23. I further 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 10% 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 willfully 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 Customs Act, 1962. Accordingly, I have no option but to conclude that the importer has wrongly classified the said imported goods under CTI 32064990 instead of 32061900 and thereby claimed ineligible exemption under Sr. No. 231 of the Customs Notification No. 50/2017 to pay lower BCD @7.5 % instead of 10%. Therefore, I find that the importer has willfully mis-declared the nature of the goods and misclassified the subject goods for the purpose of getting monetary benefit.

24 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 willful mis-classification 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.

25. 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 the instant case, the Importer has mis-classified the goods resulting in less payment of duty of Rs.2,475/-. Further Section 111(o) provides confiscation of the goods for non-observance of condition of exemption notification no. 50/2017. Hence, I find that the issue of confiscation of the impugned goods under Section 111(m) and 111(o) 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."*

17.2 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 for 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.2,94,459/**-are liable for confiscation under Section 111(o) and 111(m) and the present case merits imposition of Redemption Fine.

18. 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 @ 10% as discussed above and intentionally misclassified and claimed ineligible exemption with malafide intention to evade duty. Hence, the Customs duty amounting to **Rs.9,555/-** was short paid. I find that in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. In the instant case, the Importer has short paid IGST which tantamount to suppression of material facts and willful mis-statements. The "mens rea" can be deciphered only from "actus reus" and in the instant case, I find that the Importer is an entity of repute having access to all kinds of legal aid. Thus, providing wrong declaration and claiming undue benefit on account of short-payment of Customs duty 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.

19. Hence, I hold accordingly:

ORDER

i. I order to reject the declared classification of the goods under CTI 32064990 done by the Importer M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q) as discussed above and I order to reclassify the same under CTI 32061900. As a result, I deny the benefit of duty exemption/concession under Sr. No. 231 of Notification No. 50/2017-Customs dated 30.06.2017 and order to reassess the same with BCD @ 10%

ii. I confirm the demand of differential Customs duty amounting to **Rs. 9555/- (Rupees Nine Thousand Five Hundred and Fifty Five only)** on the importer M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q) under section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act 1962

iii. I order to confiscate the goods valued at total assessable value of **Rs. 294459 (Rupees Two Lakh Ninety Four Thousand Four Hundred and FiftyNine Only)** under Section 111(d) and 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, I impose a Redemption Fine of Rs.30,000/- (Rupees Thirty Thousand only) under Section 125 of the Customs Act, 1962. The same is to be paid by M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q)

iv. I hereby impose a penalty equal to the sum of differential duty of **Rs. 9555/- (Rupees Nine Thousand Five Hundred and Fifty Five only)** and applicable interest on differential duty as per Section 28AA of the Customs Act, 1962 on importer M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q) 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 duty, interest and penalty 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.

23/9/25

(दिनेश कुमार)

उप आयुक्त, सीमा शुल्क,

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

To:

M/s PENN COLOR INDIA PRIVATE LIMITED (IEC: AAICP4040Q)
Office 602, B Wing, Ashok Enclave, Chincholi Road, Link Road Junction,
Malad West, Mumbai, Maharashtra

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