

 सत्यमेव जयते BHARAT SARKAR	सीमा शुल्क आयुक्त का कार्यालय (एन एस-1) OFFICE OF COMMISSIONER OF CUSTOMS (NS-1) जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA ताल -उरण, जिला- रायगढ़, महाराष्ट्र-400 707 TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA-400707	 INDIAN CUSTOMS
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F. No: CUS/AG/MISC/1658/2025/Gr. IIG/JNCH

Dated: 09.10.2025

SCN No. 1117/2025-26/JC/Gr. IIG/NS-I/CAC/JNCH

S/10-510/2025-26/Adj/JC/Gr. IIG/NS-I/CAC/JNCH

DIN No. 20251078NW0000333D91

**SHOW CAUSE NOTICE ISSUED UNDER SECTION 124 READ WITH SECTION 28 OF
CUSTOMS ACT, 1962**

On the basis of the Analytics Report 13/2021-22 dated 13/05/2021 issued by the NCTC, Mumbai, on the issue of “short levy of BCD @ 2.5% on polymers of Vinyl Chloride (PVC) ” the data pertaining to imports under CTH 3904 made by the importer M/s K-FLEX INDIA PRIVATE LIMITED , through JNCH (INNSA1) was analysed in detail. It is observed that M/s. (IEC - 397006705) having address as PLOT NO. F-19, F-22-24, F-27, MIDC RANJANGAON, KAREGAON, PUNE-412220, have imported products of PVC classifying under heading 3904 vide various bills of entry availing ineligible BCD concessional benefit under Notification No. 50/2017-Cus dated 30.06.2017 (Sr. No. 267) from 06/07/2019 to 21/05/2022. The goods were cleared under on payment of BCD @ 7.5% instead of 10%.

2. With effect from 06/07/2019, the description of the said entry (Sr. No. 267) has been amended to read as “ All goods other than polymers of Vinyl Chloride” vide serial no. 19 of Notification No. 25/2019-Cus dated 06/07/2019, accordingly concessional BCD rate was withdrawn and said goods were to be cleared after payment of BCD @ 10%. Further, vide Sr. No. 3 of Notification No. 26/2022-Cus dated 21/05/2022, the description of the entry was again amended to read as “ All Goods”, accordingly concessional rate of 2.5% was again given to said goods. So said good were to be levied BCD @ 10% from 06/07/2019 to 21/05/2022. However, it appears that importer has wrongly availed concessional benefit under Notification No. 50/2017-Cus dated 30.06.2017 (Sr. No. 267) for the period 06/07/2019 to 21/05/2022 and thus the duty not paid duty to incorrect availment of said exemption notification is recoverable from the importer.

3. The total assessable value of the BE items so imported is ₹ 2181830.00 /- and it appears that a short levy of duty amounting to ₹ 70800.38/- (as detailed in Annexure-‘A’) is recoverable from the Importer along with applicable interest and penalty.

4. In view of the above, Consultative letter bearing No. 1798 dated 13.01.2023 was issued to the importer to clarify the issue raised by the department and if agreed to the

observation/finding of the department, the importer was advised to pay the differential duty alongwith applicable interest and penalty. However, no reply or submission is given by importer in this regard.

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

5.1 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.'

5.2 **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

'(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per

cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing. '

5.3 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.'

5.4 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;'

5.5 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, harbouring, 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.'

5.6 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 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.'

6. 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 [CBEC's (now 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 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 declares the correct classification, applicable rate of duty, 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 to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods

7. Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty by wilful 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 ₹ 70800.38/- (as detailed in Annexure). 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.

8. 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. Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

9. It appears 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(m) and/or 111(o) of the Customs Act, 1962.

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

11. In view of the above, the importer, **M/s. K-FLEX INDIA PRIVATE LIMITED** is hereby called to show cause to the Joint/Addl. Commissioner of Customs, Gr. 2G, JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:-

(i) Differential short paid Duty amounting to **₹ 70,800/- (Rupees Seventy Thousand Eight Hundred Only)** for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' should not be demanded under Section 28(4) of the Custom Act, 1962.

(ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act, 1962.

(iii) The said subject goods imported vide Bills of Entry as detailed in Annexure having assessable value of **₹ 21,81,830.00/- (Rupees Twenty One Lakh Eighty One Thousand Eight Hundred Thirty Only)** should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

(iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

(v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

12. It is also advised that the Importer may avail the benefit of reduced penalty @15% of duty and interest so specified in this notice in terms of Section 28(5) of the Customs Act, 1962 by payment of duty and interest within 30 days of receipt of this notice, failing which Importer may be subject to higher penalty equal to the duty and interest so determined.

13. This Show Cause Notice is issued without prejudice to any other action that may be taken in respect of the said goods/notices and / or against any other firm/person concerned

covered or not covered under the provisions of the Customs Act, 1962 and/or any other law for the time being in force in the Union of India.

Digitally signed by
Parul Singhal
Date: 09-10-2025

(Dr. Parul Singhal)

Joint Commissioner of Customs,
Gr. IIG, NS-I, JNCH

To:

M/s K-FLEX INDIA PRIVATE LIMITED
PLOT NO. F-19, F-22-24, F-27, MIDC RANJANGAON,
KAREGAON, PUNE-412220

Copy to:-

1. The Dy./Asstt. Commissioner of Customs, Audit, JNCH.
2. The Dy./Asstt. Commissioner of Customs, Adjudication Cell, (I), JNCH.
3. Office copy
4. Notice Board (for display)