



भारतसरकार/ Government of India
वित्तमंत्रालय / Ministry of Finance
कार्यालय/ Office of the
आयुक्त सीमाशुल्क-(लेखापरीक्षा)



**BHARAT
SARKAR**

Commissioner of Customs-(Audit)
Jawaharlal Nehru Custom House (JNCH)
NhavaSheva, Tal: Uran, Dist: Raigad, Maharashtra-400
707

**INDIAN
CUSTOMS**

F.No. S/26-MISC-30/2025-26/IIG/JNCH

Dt. 02.06.2025

SCN No.208/2025-26/JC/Gr.IIG/NS-I/CAC/JNCH

DIN No.20250678NX0000000CA9

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

Whereas, M/s Narain Enterprise (IEC: 5208039851) having address at 'Plot No. 201, Road No. 02, GIDC Sachin, Surat, Gujarat-394230 (hereinafter referred to as 'the importer) had cleared their imported items mentioned in Annexure-A (hereinafter referred to as 'the subject goods') at lower rate of BCD vide Bill of Entry as mentioned in Annexure-A by availing benefits of the Notification No. 20/2020-Cus., dated 09.04.2020. The details of the Notification No. 20/2020-Cus., dated 09.04.2020 are mentioned below: -

'Table-A'

Sr. No.	Chapter of Heading or sub-heading or tariff item	Description of goods
1	9018 or 9019	Artificial respiration or other therapeutic respiration apparatus (Ventilators)
2	63 or any chapter	Face masks and surgical Masks
3	62 or any chapter	Personal Protection Equipment (PPE)
4	30, 38 or any chapter	Covid-19 testing kit
5	Any chapter	Inputs for manufacturing of items at Sr. No. 1 to 4 above, subject to the condition that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

2. The Notification No. 20/2020-Cus., dated 09.04.2020 was issued in the in public interest for exempting the goods of the description specified in column (3) of the Table below falling within the Chapter, heading, sub-heading or tariff item of the First Schedule to the said Customs Tariff Act specified in column (2) of the above Table, from whole of the duty of customs leviable thereon under the First Schedule to the said Customs Tariff Act and the whole of health cess leviable thereon under section 141 the said of Finance Act, 2020.

3. However, it was noticed that some importers were engaged in imports of VTM (Viral Transport Media) kits and RNA extraction kits by availing benefit of S.No. 4 of the Notification No. 20/2020-Cus., dated 09.04.2020 and inputs for VTM kits such as nasopharyngeal swab and plastic tubes by claiming benefit of S.No. 5 of Notification No. 20/2020-Cus., dated 09.04.2020. The VTM kits and RNA extraction kits are not the Covid-19 testing kits. The VTM kits are merely tools for nasopharyngeal sampling in flu like diseases and RNA extraction kits are used for extraction RNA from the samples. It was further observed that there are multiple uses of RNA extraction kits in medical science like research and diagnose of cancer apart from RNA extraction from swab sample collected for Covid-19 testing. For any Covid-19 RT-PCR testing, the extracted RNA is the starting material. Thus, the VTM kits and RNA extraction kits are not Covid-19 testing kits and the benefit under S.No. 04 of Notification No. 20/2020-Cus., dated 09.04.2020 is not available for the same. Therefore, only RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for the benefit under Sr. No. 4 of Notification No. 20/2020-Cus., dated 09.04.2020.

4. Similarly, the raw material of inputs such as nasopharyngeal swab and plastic tubes required to prepare VTM kits and the raw material or inputs required to prepare RNA extraction kits are also not eligible for benefit under S.No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020. Therefore, the raw material or inputs of RT-PCR testing kits and Rapid Antigen/Antibody testing kits for Covid-19 would qualify for the benefit under S.No. 5 of the Notification No. 20/2020-Cus., dated 09.04.2020, only when the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty), Rules, 2017.

5. Accordingly, a **Consultative Letter No. 1187/2021-22/PCA (C-3)**, dated 28.06.2021 (DIN No. 2021077800000000D1AE) was issued to the importer for payment of short levied BCD as mentioned in Annexure-A along with applicable interest and penalty. Vide the aforementioned Consultative letter, the importer was advised to pay the differential duty under Section 28 of the Customs Act, 1962 along with applicable interest and penalty thereon under Section 28AA of the Customs Act 1962. The Consultative letter was issued considering the Pre-Notice Consultation Regulations, 2018.

6. The importer did neither paid the differential duty along with the applicable interest and penalty nor responded in reference of the Consultative letter issued.

7.1 In this case the M/s Narain Enterprise (IEC: 5208039851) having address at 'Plot No. 201, Road No. 02, GIDC Sachin, Surat, Gujarat-394230 imported the items as mentioned in Annexure-A and availed benefit of concessional BCD rates under Notification No. 20/2020-Cus., dated 09.04.2020 for which they were not eligible.

7.2 *Section 28(4) states that 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.

7.3 In view of the above, it appears that the importer had willfully wrongfully availed the benefit of concessional BCD rates under Notification No. 20/2020-Cus., dated 09.04.2020 which caused the loss of government revenue.

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 BCD amount has not been paid correctly.

9. 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:

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 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).

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.

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 appears to have Short-levy of BCD rate by wrongfully availing the benefit of concessional BCD rates under Notification No. 20/2020-Cus., dated 09.04.2020. 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, 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 appears that the importer has given a declaration under section 46(4) of the Act, for the truthfulness of the content submitted at the time of filing Bill of Entry. However, the applicable BCD rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appears that the Importer has submitted a false declaration under section 46(4) of the Act. By the act of presenting goods in contravention to the provisions of section 111(m), it appears that the importer has rendered the subject goods liable for confiscation under section 111(m) of the Act. For the above act of deliberate omission and commission that rendered the goods liable to confiscation. Accordingly, the Importer also appears liable to penal action under Section 112 (a) and /or 114 A and of the Customs Act, 1962.

11. From the foregoing, it appears that the Importer have willfully mis-classified the goods; that the Importer have submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of Importer, there has been loss to the government exchequer equal to the differential duty.

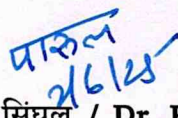
12. Now, therefore, in exercise of the powers conferred by Section 124 read with Section 28(4) of the Customs Act, 1962, the importer, M/s Narain Enterprise (IEC: 5208039851) is hereby called upon to Show Cause to the Joint Commissioner of Customs, Group- IIG, NS-I, Jawaharlal Nehru Customs House, Nhava Sheva, Raigad within 30 days of receipt of this notice as to why:

- i. The benefit of concessional rate of BCD under Notification No. 20/2020-Cus., dated 09.04.2020 for the subject goods should not be rejected and BCD rates under CTH 39095000 & CTH 39219099 should not be levied on the subject goods.
- ii. Differential duty amount of Rs. 1,99,609/- (Rupees One Lakh Ninety-Nine Thousand Six Hundred and Nine only) with respect to the items covered under Bill of entry as mentioned in Annexure A to this notice should not be demanded under Section 28 (4) of the Customs Act, 1962 along with applicable interest as per Section 28AA of the Customs Act, 1962.
- iii. The subject goods as detailed in Annexure-A to this notice having a total assessable value of Rs. 15,37,820/- (Rupees Fifteen Lakh Thirty-Seven Thousand Eight Hundred and Twenty only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv. Penalty on the duty should not be recovered under the provisions of section 28(5) of the Customs Act, 1962.
- v. Penalty should not be imposed under Section 112(a) & 114(A) of the Customs Act, 1962.

13. 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 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.

14. A Show Cause Notice covering the same issue but for a different period and not covered under SCN in respect of this importer may also be issued as per Regulation 3(6) of Pre-notice Consultation Regulation, 2018.

15. 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.


(डॉ. पारुल सिंघल / Dr. Parul Singhal)
Joint Commissioner of Customs
Gr. IIG, NS-I, JNCH,
Nhava Sheva

To,
M/s Narain Enterprise (IEC: 5208039851)
Plot No. 201, Road No. 02, GIDC Sachin,
Surat, Gujarat-394230

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)