

भारतसरकार / Government of India  
वित्तमंत्रालय / Ministry of Finance

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)

सीमाशुल्कआयुक्त (एनएस- V) का कार्यालय

JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,

जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,

TALUKA- URAN, DISTRICT- RAIGAD, MAHARASHTRA -400707

तालुका- उरण, जिला- रायगढ़, महाराष्ट्र- 400707

F. No. S/26-Misc-74/2025-26/Gr.VB/JNCH

Date: 18.06.2025

SCN No. 319/2025-26/ADC/GR. VB/NS-V/CAC/JNCH

DIN: 20250678N X 0000 55655A

**DEMAND CUM SHOW CAUSE NOTICE UNDER SECTION 124 AND**

**SECTION 28 OF THE CUSTOMS ACT, 1962**

Whereas, **M/s. MK Medequips (IEC:813017858)** having address at '196, Nani Salvi Wad, Saraspur, Ahmedabad, Gujarat-380018(hereinafter referred to as 'the importer) had cleared their imported items broadly classified as "Medical Equipments" (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 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 medical equipments other than "Artificial respiration or other therapeutic respiration apparatus (Ventilators)" by availing benefit of S. No. 1 of the Notification No. 20/2020-Cus., dated 09.04.2020.

The exemption under Notification No. 20/2020-Customs is intended for ventilators and similar life-support machines that are used in hospitals, especially in critical care units, to help patients who are unable to breathe on their own. Ventilators are complex machines that take over or assist with the complete process of breathing. They push air, and in many cases a mix of oxygen, into the patient's lungs and control the timing, pressure, and volume of each breath. These machines are used in life-threatening situations, such as during surgeries, in intensive care units (ICUs), or in cases of severe respiratory failure, including COVID-19.

4. On the other hand, the devices imported vide the said BE — oxygen concentrators (EverFlo), CPAP machines (RemStar Auto and DreamStation), and BiPAP machines (IN761S) — serve very different and less intensive purposes. Oxygen concentrators simply extract oxygen from the air and deliver it to the patient through a nasal cannula or mask; they do not support or control the act of breathing. CPAP machines provide a steady flow of pressurized air to keep the airway open during sleep, mostly used for sleep apnea, and do not adjust to the patient's breathing pattern. BiPAP machines offer two pressure levels (for inhalation and exhalation), providing more comfort than CPAP, but still rely on the patient initiating each breath. These devices are generally used at home or in non-ICU clinical settings and are not substitutes for full-fledged ventilators.

Therefore, although these devices help with breathing in certain conditions, they do not replace or perform the essential function of a ventilator and they are not eligible for exemption under Notification 20/2020, which was specifically designed to cover critical respiratory support systems used during emergencies.

Thus, the subject goods are not to be classified as "Artificial respiration or other therapeutic respiration apparatus (Ventilators)" and the benefit under S.No. 01 of Notification No. 20/2020-Cus., dated 09.04.2020 is not available for the same.



5. Accordingly, a Consultative Letter No. 1161/2021-22/PCA (C-3), dated 28.06.2021 (DIN No. 20210778000000700000) 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. MK Medequips (IEC: 813017858) having address at '196, Nanai Salvi Wad, Saraspur, Ahmedabad, Gujarat-380018 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.*

**9.8 Section 117.** *Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.*

#### **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 117 of the Customs Act, 1962.

11. From the foregoing, it appears that the Importer have willfully misclassification 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. Therefore, in exercise of the powers conferred by Section 124 read with Section 28(4) and Section 28AA of the Customs Act, 1962, **M/s. MK Medequips** (IEC: 813017858) '196, Nani Salvi Wad, Saraspur, Ahmedabad, Gujarat-380018 is hereby called upon to show cause to the **Additional Commissioner** of Customs, Group 5B, JNCH, Nhava Sheva, Taluka - Uran, District - Raigad, Maharashtra - 400707, within 30 days of the receipt of the 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 90192090 should not be levied.
- ii. Differential BCD amount of **Rs.6,08,131 /- (Rupees Six Lakh Eight Thousand One Hundred and Thirty-One 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.49,36,131/- (RupeesForty-Nine Lakh Thirty-Six Thousand One Hundred and Thirty-One only)** should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv. Penalty should not be imposed under Section 112(A), 114(A) & 117 of the Customs Act, 1962.



13. The written explanation/reply should be filed by the noticee to the Additional Commissioner of Customs, Group 5B, JNCH, NhavaSheva, within 30 days from the date of this notice. You are further required to intimate in your written reply whether you wish to be heard in person before the case is adjudicated.

14. If no reply is received within 30 days of receipt of this notice, or noticee fails to appear before the adjudicating authority as and when the case is posted for personal hearing, the case will be decided on the basis of the evidences available on record without further reference to the noticee.

15. This Show Cause Notice is issued without prejudice to any other action that may be taken against the noticee and or any other firm(s) or person(s) under the provisions of the Act or any other law for the time being in force in the Union of India. The department reserves its right to amend, modify or supplement this notice at any time prior to the adjudication of the case.

  
(Dr. Satish Kumar)

Additional Commissioner of Customs,  
Gr. VB, NS-V, JNCH

To,

M/s. MK Medequips (IEC: 813017858)  
'196, Nani Salvi Wad, Saraspur,  
Ahmedabad, Gujarat-380018

Copy to:-

1. The Commissioner of Customs (Audit), JNCH, Nhava Sheva- Circle C-3
2. The Deputy Commissioner of Customs, CAC, JNCH, Nhava Sheva.
3. Notice Board
4. Office Copy.



## Annexure-A MK Medequips

[illegible]