



सत्यमेव जयते

आयुक्त, सीमाशुल्क (एनएस- V) कार्यालय,
**OFFICE OF THE COMMISSIONER OF
CUSTOMS (NS- V),**

जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
**JAWAHARLAL NEHRU CUSTOM HOUSE,
NHAVA SHEVA,**

तालुका- उरण, जिला- रायगढ़, महाराष्ट्र- ४००७०७.

**TALUKA- URAN, DISTRICT- RAIGAD,
MAHARASHTRA - 400 707.**



F. No. S/26-Misc-409/2025-26/Gr. VA JNCH Date: १४ / 1० / 2025

F. No. S/2-Audit-Gen-383/2021-22/JNCH/C-3

Show Cause Notice No. ~~133~~ 2025-26/AC/Gr. VA/CAC/JNCH

S/10-1130/2025-26/Adj/AC/Gr.VA/NS-V/CAC/JNCH

DIN No. 20251178NX0000013755

**SHOW CAUSE NOTICE ISSUED UNDER SECTION 28(4) OF THE
CUSTOMS ACT, 1962**

On the basis of the Alert Circular No. 11/2019 dated 30.03.2019 issued by the Commissioner of Customs (Audit), Mumbai, Zone-I vide F. No. S/16-Misc-75/2018-19 Audit (P&C), data pertaining to imports made by various importers through JNCH (INNSA1) during 01.03.2018 to 30.11.2022 was analysed in detail. It is observed that **M/s. GURMEHER INTERNATIONAL (IEC- AAVFG3509K)** having address as A-17 FIRST FLOOR ASHOK VIHAR PHASE-1 DELHI 110052 have imported goods having description "Battery" under the CTH 8507 as detailed in Annexure- 'A' and paid lower rate of BCD and/or IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @ 12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods attracts levy of BCD & IGST as per Table-A below.

2. The Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8507 attract levy of BCD & IGST as per Table-A. However, they have been cleared under lower rate of BCD.

Table-A

Tariff Item	Description of goods	BCD % (Ntn.)	SWS	IGST	Total Duty	Remarks
8507 (except 8507 60 00 and 8507 90)	Battery pack of cellular mobile phones [Other than Lithium-ion]	15	10	28	49.12	02.02.18- till date
85076000	Lithium-ion battery of cellular mobile phones	15	10	28	49.12	02.02.18- 26.07.18
		15	10	18	37.47	27.07.18-till date
85076000	Battery pack of cellular mobile phones [Lithium-ion]	20	10	18	43.96	30.01.19-till date
85076000	Power Bank [Lithium-ion]	20	10	18	43.96	30.01.19-till date

3. From the above table, it appears that

- Battery pack of cellular mobile phones except 85076000 and 850790 (other than lithium ion) falls under CTH 8507 & attracts BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.
- Till 26.07.2018 lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.
- From 27.07.2018 to 30.01.2019 lithium ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.
- From 30.01.2019 till date lithium ion battery of cellular mobile phones falls under CTH 85076000 & attracts BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.
- From 30.01.2019 power bank (lithium ion) falls under CTH 85076000 & attracts BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.

3.1. On scrutiny of the import data, it was observed that goods covered under CTH 8507 were cleared by declaring lower rate of BCD and/or IGST under Sl. No. 203 of Schedule II of IGST Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 @ 12% and/or @18% under sr. nos. 376AA or 376AAA of Schedule III of IGST notification no. 19/2018- Integrated tax (Rate) dated 27.07.2018 or a lower IGST rate in other Schedule, however, the imported goods attracts levy of BCD & IGST as per Table-A above.

3.2. The total assessable value of the BE items so imported is ₹ 263952/- and it appears that a short levy of BCD and/or IGST amounting to ₹ 17130/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.

4. In view of the above, Consultative letter No. 2611 dated 2/6/2023 was issued to 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 subsection (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 ₹ 17130/- (as detailed in Annexure-'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.

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.

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(o) of the Customs Act, 1962. 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.

10. In view of the above,

- a. The importer, **M/s. GURMEHER INTERNATIONAL (IEC-AAVFG3509K)** having address as A-17 FIRST FLOOR ASHOK VIHAR PHASE-1 DELHI 110052 is hereby called to show cause to the **Assistant Commissioner of Customs**, Gr. VA, 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 **₹ 17,130/-** 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-'A' having assessable value of **₹ 2,63,952/-** should not be held liable for confiscation under Section 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.

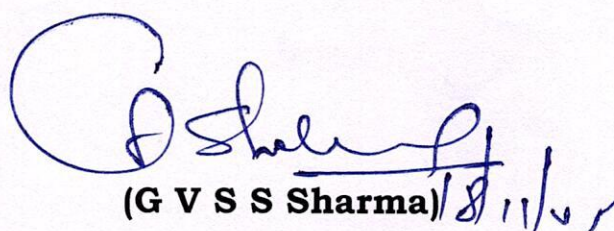
11. It is also advised that the importer may avail the benefit of reduced penalty @15% of duty and interest so specified in this notice in terms of Section 28(5) of the Customs Act, 1962 by payment of duty and interest within 30 days of receipt of this notice, failing which importer may be subject to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

12. The written explanation/reply should be filed by the noticee to the **Assistant Commissioner of Customs**, Gr. VA, JNCH, Nhava-Sheva, Tal.- Uran, Distt. Raigad, Maharashtra-400707 within 30 days from the date of this notice. They are further required to intimate in their written reply whether they wish to be heard in person before the case is adjudicated.

13. If no cause is shown against the action proposed to be taken or the importer and CHA does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on merits.

14. The department reserves its right to amend, modify or supplement this notice at any point of time prior to the adjudication of the case.

15. This present show cause notice is issued without prejudice to any other action that may be taken against the notice or any other firm(s) or person(s) under the provisions of the Customs Act, 1962 or any other law for the time being in force in the Union of India.



Assistant Commissioner of Customs
GR.VA, NS-V, NHAVA SHEVA, JNCH

M/s. GURMEHER INTERNATIONAL

A-17 FIRST FLOOR ASHOK VIHAR,
PHASE-1 DELHI, 110052

Copy to:

1. The Asst./Dy. Commissioner of Customs, CAC, JNCH (information)
2. The Dy. Commissioner of Customs, Circle- C3, Audit, JNCH
3. Notice Board (CHS Section).
4. Office.

IEC Name	BE Number	BE Date	Full Item Description	Assessable Value Amount	Total Duty Amount	DUTY APPLICATION LE @43.96	DIFFERENTIAL DUTY
GURMEHER INTERNATIONAL	9726202	27-11-2020	POWER BANK VP361 10KMAH BLACKBYSEAN	263952	98902.8	116033.3	17130.5
GURMEHER INTERNATIONAL Total				263952	98902.8	116033.3	17130.5

True copy
 11/11/20
 8/11/20
 8/11/20

Time
11/10/10
11/10/10
11/10/10