



OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-I),  
सीमाशुल्क आयुक्त का कार्यालय (एनएस -I)

NHAVA-SHEVA, JAWAHARLAL NEHRU CUSTOM HOUSE,  
न्हावा-शेवा, जवाहरलाल नेहरू कस्टम हाउस,  
TAL-URAN, DISTRICT- RAIGAD, MAHARASHTRA - 400 707.  
ताल-उरण, जिला- रायगढ़, महाराष्ट्र - 400 707

F. No. S/26-Misc-87/2024-25/Gr. II (C-F)

Date of order: 25.08.2025

F. No. S/10-Adj-24/2025-26 Gr II(C-F)

Date of issue: 26.08.2025

**SCN No.1112/2024-25/AC/Gr.II(C-F)/NS-I/CAC/JNCH Dated 23.09.2024**

DIN :20250878NW0000210330

**Passes by: Shri Dinesh Kumar, Deputy Commissioner of Customs Gr. II(C-F).**  
**Order No. 768/2025-26/AC/Gr. II CF/NS-I/CAC/JNCH**

Name of Party/Noticee/Importer: M/s. NATURES GLOBAL SERVICE, (IEC No.  
506029689)

**मूलआदेश**

1. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम 1962 की 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 - 400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 1.50 रुपये मात्र का स्टाम्प लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 1.50 रुपये का स्टाम्प भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के 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

M/s. NATURES GLOBAL SERVICE, (IEC No. 506029689) (hereinafter referred to as 'the importer') having their registered address at A-3, New Rajinder Nagar, New Delhi-110060 had imported **"A4 UNBRANDED PRINTING PET FLIM (A4 100 SHEETS PKT)" etc.** vide Bill of entry no. 5061631 dated 26.09.2019, through their Customs Broker M/s. APS FREIGHT & TRAVELS PVT. LTD. (11-1282) by classifying the same under CTH 37011010 and paid IGST under serial number 76 of Schedule-II of the IGST levy Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 as amended (hereinafter referred to as "the said notification").

2. The relevant parts of the IGST levy Notification No. 01/2017- Integrated Tax (Rate) dated 28.06.2017 are reproduced as under:

**TABLE-A**

IGST Schedule	Schedule Sr.No	Description
Sch-II- 12%	76	Photographic plates and film for x-ray for medical use
Sch-III- 18%	74	Photographic plates and film in the flat, sensitised, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitised, unexposed, whether or not in packs; such as Instant print film, Cinematographic film (other than for x-ray for Medical use)

3. During the course of Post clearance Audit of Bill of Entry no. 5061631 dated 26.09.2019, it has been prima facie noticed that the importer has imported the said goods under CTH 37011010 and paid IGST under serial 76 of Schedule-II of Notification No. 01/2017 for paying IGST @ 12% instead of applicable serial number 74 of Schedule III of said Notification No. 01/2017 wherein IGST is 18%. The details of description of goods, Bill of Entry, applicability of corrected IGST amount, are as per Table 'A'. IGST @12% as per Sr. No 76 of Schedule-II is applicable for photographic films for X-ray for medical use. Whereas instant print films (other than medicine use) attracts @18% IGST as per Sr No. 74 of Schedule-III of the said notification.

4. Accordingly, a consultative letter No. 1015/2022-23/C1 dated 15.11.2022 was issued to the importer for payment of short levied duty along with applicable interest and penalty.

5. Vide the aforementioned Consultative letter No 1015/2022-23/C1 dated 15.11.2022, the Importer was advised to pay the Differential IGST along with interest and penalty within 15 days of the receipt of the consultative letter in terms of Section 28(1) and 28(4) of the Customs Act 1962. The importer was further advised to avail the benefit of lower penalty in terms of Section 28(5) of the Customs Act, 1962, by early payment of short paid IGST duty and interest along with penalty @ 15%. However, the importer has not responded till date.

6. Since the applicability of IGST @ 18% as per Sr. No. 74 of Sch-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.0.2017 on "Photographic plates and film in the flat, sensitised, unexposed of any material other than paper, paperboard or textiles; instant print film in the flat, sensitised, unexposed, whether or not in packs; such as Instant print film, Cinematographic film (other than for X-ray for medical use)" is very clear and specific, it appeared that the importer had wilfully mis-declared the subject goods by way of incomplete description for the purpose of importing the same, declaring IGST @12% as per serial number 76 of Schedule-II instead of 18% as per Sr. No. 74 of Schedule-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.01.2017 thereby paying lower duty than applicable and thus the provisions of Section 28 (4) are invocable in this case.



7. Relevant Legal Provisions: 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 misclassified and IGST amount has not been paid correctly.

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

#### 8.1 Section 17(1) Assessment of duty

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.

8.2 **Section 5 of IGST Act, 2017:- Levy and collection.**— (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

*Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.*

8.3 **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.*

*(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).

#### 8.4 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.

#### 8.5 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.

8.6 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.....;

#### 8.7 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....."



**8.8 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.*

**8.9 SECTION 114AA. Penalty for use of false and incorrect material. –**

*If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]*

**8.10 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.

**9. Acts of omission and commission by the Importer:**

**9.1** 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 Bill of Entry and appeared to have Short levy of IGST due to wrong selection of IGST Schedule. As the importer got monetary benefit due to said act, it is apparent that the same was done deliberately by wilful mis-



classification of the said goods in the Bill 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.

9.2 It appeared 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 IGST rate on the subject goods was not paid by the Importer at the time of clearance of goods. It also appeared 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 appeared 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 appeared liable to penal action under Section 112 (a) and /or 114 A of the Customs Act, 1962.

#### 10. Acts of omission and commission by the Customs Broker:

The importer has engaged the said Customs Broker/s for the purpose of import of the goods involved in the instant case. It appeared that importer has provided all the required information such as Invoice, Packing list, Bill of Lading etc. to the customs Broker. It appeared that had the Custom Broker exercised due-diligence during filing of subject bill of entry and claimed proper IGST rate under correct Schedule, the instance of short payment of duty (IGST) would not have happened. It appeared that this act of omission and commission on the part of Customs Broker appeared an act of connivance with the importer which has deprived the department from correct duty due. As the import documents have been processed by the said Custom Broker/s on behalf of the importer, the Customs Broker also appeared to have knowingly participated in the act of suppression of facts and mis-classification. The Customs Broker should have scrutinized the documents properly before filing the same for clearance to check correct levy ability of all the duties. As such, it appeared that the Customs Broker is also liable for penalty under Section 112(a) / or Section 114A of Customs Act, 1962 by reason of wilful mis-statement of facts.

11. From the foregoing, it appeared that the Importer as well as the Customs Broker have wilfully mis-classification the goods; that the Importer and Custom Broker 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 terms of Section 124 read with Section 28(4) of the Customs Act, 1962, M/s. NATURES GLOBAL SERVICE (IEC: 0506029689) was called upon to show cause to the Deputy/Asst. Commissioner of Customs, Group 2 C-F, NS-I, JNCH, Nhava Sheva, Taluka - Uran, District - Raigad, Maharashtra - 400707, vide Show Cause Notice No. **1112/2024-25/AC/Gr.II(C-F)/NS-I/CAC/JNCH Dated 23.09.2024** :

- i) The IGST rate claimed under Schedule II – Sr. No 76 of IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 for the subject goods should not be rejected and IGST rate under Schedule III – Sr. No. 74 of said notification should not be levied.
- ii) **Differential IGST amount of Rs 24,858/- (Rs. Twenty-Four Thousand Eight Hundred Fifty-Eight Only)** with respect to the items covered under Bill of entry no. 5061631 dated 26.09.2019 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 covered vide Bill of entry no. 5061631 dated 26.09.2019 as detailed in Annexure- A of this notice having a total **assessable value of Rs 3,73,239/- (Rupees**



- Three Lakhs Seventy-Three Thousand Two Hundred Thirty-Nine only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iv) Penalty should not be imposed on the importer M/s. NATURES GLOBAL SERVICE (IEC: 0506029689) under Section 112 (a) and /or 114 A of the Customs Act, 1962.
- v) Penalty should not be imposed on the CB M/s. APS FREIGHT & TRAVELS PVT. LTD (11-1282) under Section 112 (a) and /or 114 A of the Customs Act, 1962.

#### **DEFENCE SUBMISSIONS & PERSONAL HEARING**

13. The importer has not filed any reply to SCN. Further, personal hearing in the matter was fixed on 15.05.2025 and 05.06.2025. However, the same were not attended to by the importer. Further in response to PH Notice dated 15.05.2025, this office has received an E-Mail dated 05.05.2025 from Shri Neeraj Anand (Customs Broker No. 075/2012) on behalf of M/s Natures Global Service as under:-

"From: yashpalanand@gmail.com

To: tarun@atsequipments.com, "SATYA TIWARI" <group2cf-jinch@gov.in>, info@atsequipments.com

Sent: Monday, May 5, 2025 3:00:30 PM

Subject: ALREADY DEMAND PAYMENT DONE OF NATURES GLOBAL SERVICE (IEC 506029689) REPLY TO SCN NO.1112/2024-25/AC/GR.II CF/NS I/CAC/JNCH

Respected sir

In context to the SCN served to Importer NATURES GLOBAL SERVICE (IEC- 506029689) for demand of differential igst payment, Importer hereby confirm and declare that we have received the order no. 2024-25/AC/GR-II(C-F)/NS-I//CAC/JNCH DT 13.05.2025 AND as per the above order we had paid Rs.83500.00( Rupees Eighty three thousand five hundred only) vide CEGATE VOLUNTARY CHALLAN no. 1911236319 dt 01.04.2025 for the Differential duty for Rs. 14951/- and R. Fine for Rs.25000/- and penalty equal to duty for Rs.14951/- and interest applicable Rs.28598/- in total amount for Rs.83560.00

Kindly refer to the above and do the needful.

**Copy of challan and payment details with letter is enclosed herewith.**

You are requested to please consider our request and take necessary action for closure of the case.

Yours sincerely Neeraj

Anand

Customs Broker no. 075/2012 "

14. In view of the above, the case has been taken up for adjudication on the basis of available record.

#### **DISCUSSION AND FINDINGS**

15. I have carefully gone through the facts and written submission by the Importer and I find that M/s. NATURES GLOBAL SERVICE (IEC Code-506029689) had imported **"A4 UNBRANDED PRINTING PET FLIM (A4 100 SHEETS PKT)" etc.** " vide Bill of entry No. 5061631 dated 26.09.2019 by classifying the same under CTH 37011010 and paid IGST under serial number 76 of Schedule-II of the IGST levy Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 as amended (hereinafter referred to as "the said notification").

16. I find it relevant to quote the relevant entry of the IGST levy Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017 hereinunder:

**TABLE-A**

IGST Schedule	Schedule Sr.No	Description
Sch-II- 12%	76	Photographic plates and film for x-ray for medical use



17. I find that, during the course of Post clearance Audit of Bills of Entry, it has been noticed that the importer has imported **"A4 UNBRANDED PRINTING PET FLIM (A4 100 SHEETS PKT)" etc.** under CTH 37011010 and paid IGST @ 12% under serial 76 of Schedule-Notification No. 01/2017 instead of applicable serial number 74 of Schedule III of said Notification No. 01/2017 wherein IGST is 18%. The relevant part of the IGST Notification is reproduced hereinbelow:-

IGST Schedule	Schedule Sr.No	Description
Sch-III- 18%	74	Photographic plates and film in the flat, sensitised, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitised, unexposed, whether or not in packs; such as Instant print film, Cinematographic film (other than for x- ray for Medical use)

From the above it is evident that IGST @12% as per Sr. No 76 of Schedule-II is applicable for photographic films for X-ray for medical use. Whereas instant **"A4 UNBRANDED PRINTING PET FLIM (A4 100 SHEETS PKT)" etc.** attracts @18% IGST as per Sr No 74 of Sch III as mentioned above. The importer in the reply to SCN has not disputed the demand. Only contention of the importer is that they have already paid duty against Order No. 2024-25/AC/GR-II(C-F)/NS-I/CAC/JNCH dated 13.05.2025. In this regard, on careful examination of the said Order dated 13.05.2025, I find that the same is in respect of another SCN No. 2902/2023-24/AC/GrII (C-F) /CAC/JNCH dated 26.03.2024 and Bill of Entry No. 3280652 dated 17.05.2019. Whereas the present SCN pertains to other BE 5061631 dated 26.09.2019. Thus, the contention of the importer is factually incorrect.

18. After going through imported goods descriptions, IGST Notification No. 01/2017-IT rate dated 28.06.2017(as amended) & Notification 43/2017-IT rate dated 14.11.2017 (as amended). I find that imported goods will fall under Sl. No. 74 of Schedule III wherein applicable IGST rate @ 18% instead of Sl. No. 76 of Schedule-II wherein applicable IGST rate @ 12%. However, Importer paid IGST rate @ 12% as per Sl. No. 76 of Notification No. 01/2017 against the imported goods. which resulted into short payment of IGST of Rs Rs. 24,858/-.

19. Since, the applicability of IGST @ 18% as per Sr. No. 74 of Schedule-III of IGST Notification No. 01/2017-Integrated Tax(Rate) dated 28.06.2017 on "Photographic plates and film in the flat, sensitised, unexposed, of any material other than paper, paperboard or textiles; instant print film in the flat, sensitised, unexposed, whether or not in packs; such as Instant print film, Cinematographic film (other than for x-ray for Medical use) is very clear and specific, it shows that the Importer had wilfully made short payment of IGST by wrong availment of IGST Schedule against imported goods, thereby paying lower duty than applicable and thus the provisions of Section 28 (4) are invocable in this case.

20. 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 instant case, Importer has mis-classified the goods resulting in less payment of duty. Hence, I find that the issue of confiscation of the impugned goods under Section 111(m) 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 111 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."*

**21.** 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 to 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.3,73,239/-** are liable for confiscation under Section 111(m). I observe that the present case also merits imposition of Redemption Fine.

**22.** 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 IGST @ 18% as discussed above and intentionally did not mention/declare applicable serial no. of IGST Notification with mala fide intention to evade duty. Hence, the IGST amounting to **Rs.24,858/-** 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 IGST 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*. Regarding imposition of penalty under Section 114AA, I find that the Audit has not brought any document on record which was found false or incorrect. Further, penalty under Section 114AA is imposed on person which has also not been identified in the case. As such I find it is not a fit case to invoke Section 114AA in the present case.

**23.** Regarding the role of the Customs Broker in the case I find that it is alleged by the audit the Customs Broker appeared to have knowingly participated in the act of suppression of facts and mis-classification and that the Customs Broker should have scrutinized the documents properly before filing the same for clearance to check correct levy ability of all the duties. As such, the Customs Broker is liable for penalty under Section 112(a)/ or Section 114A of Customs Act, 1962 by reason of wilful mis-statement of facts. In this regard, I find that audit could not bring any positive evidence which suggest that the Customs Broker has consciously misclassified these imported goods. In this regard, I find that the CBIC, vide its Instruction No. 20/2024-Customs dated 03-09-2024 has instructed that Customs Brokers should not be implicated in matters involving interpretative



disputes, unless the element of abetment of the CB in the investigation is established by the Investigating Agency in its offence report. Under such circumstances, I refrain from invoking penal action against the CB in the present matter.

24. Hence, I hold accordingly:

**ORDER**

- i. I order to reject the self-assessment done by the Importer M/s. NATURES GLOBAL SERVICE as discussed above and I order to re-assess the same with IGST @ 18% as per Sr. No. 74 of Schedule III of IGST notification No. 1/2017. As a result, I confirm the demand of differential IGST duty amounting to **Rs.24,858/-** (Rs. Twenty four thousand Eight Hundred fifty eight only) on the importer M/s. NATURES GLOBAL SERVICE under section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act 1962
  - ii. I order to confiscate the subject goods valued at total assessable value of 3,73,239/- (Rupees Three Lakhs Seventy-Three Thousand Two Hundred Thirty-Nine only) under Section 111(m) of the Customs Act, 1962. However, as the goods are not available for confiscation, I impose a Redemption Fine of Rs.37,000/- (Rupees Thirty Seven Thousand only) under Section 125 of the Customs Act, 1962. The same is to be paid by M/s. NATURES GLOBAL SERVICE.
  - iii. I hereby impose a penalty equal to the sum of differential duty of **Rs.24,858/-** (Rs. Twenty four thousand Eight Hundred fifty eight only) and applicable interest on differential duty as per Section 28AA of the Customs Act, 1962 on importer M/s. M/s. NATURES GLOBAL SERVICE 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 penalty is paid within the period of 30 days from the receipt of this order.
  - iv. 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. I also refrain from imposing penalty under section 114AA on the importer M/s. NATURES GLOBAL SERVICE.
  - v. I drop the proceeding initiated against the Customs Broker CB M/s. APS FREIGHT & TRAVELS PVT. LTD (11-1282)
22. 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.

  
(दिनेश कुमार)

उप आयुक्त, सीमा शुल्क,

मूल्यांकन समूह II (सी-एफ), एनएस-1, जेएनसीएच

To,  
NATURES GLOBAL SERVICE (IEC Code-506029689)  
A-3, NEW RAJINDER NAGAR, NEW DELHI-110060

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. CB M/s. APS FREIGHT & TRAVELS PVT. LTD (11-1282)
8. Office copy