



सीमा शुल्क आयुक्त का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS
केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V
CENTRAL ADJUDICATION CELL, NS-V
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
ताल-ऊरण, डिस्ट-राइगड़, महाराष्ट्र-४०० ७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

DIN : 20250778NX0000111DAC

Date of Order: 23/07/2025

F.No. S/10-344/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH

Date of issue: 23/07/2025

SCN No.: 854/2024-25/ADC/Gr.VA/CAC/JNCH

SCN Date: 31/07/2024

Passed By: Shri Mazid Khan

Joint Commissioner of Customs, CAC, NS-V, JNCH

Order-In-Original No. : 544/2025-26/JC/GR.VA/NS-V/CAC/JNCH

Name of Party/Noticee :- M/s BRIGHT BEGININGS PRIVATE LIMITED (IEC-AAGCB2639D)

मूल आदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
- 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 2.00 रुपये मात्र का स्टॉप 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 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
- 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

- This copy is granted free of charge for the use of the person to whom it is issued.
- An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Nhava 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.2.00 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. 2.00 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
- 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

1. 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 analyzed in detail.
2. While analyzing the data, it was observed that **M/s. BRIGHT BEGININGS PRIVATE LIMITED (IEC- AAGCB2639D)** having address as H-35, WEST JYOTI NAGAR, LONI ROAD, SHAHDARA, DELHI 110094 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. Accordingly, SCN No. 854/ADC/2024-25/Gr. VA/CAC/JNCH dated 31.07.2024 was issued to the importer, which inter-alia stated:
 - 2.1 The Bills of Entry (as per Annexure-A) wherein goods have been classified under CTH 8507 attract levy of BCD & IGST as per Table-B below. 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

- 2.2 From the above table, it appears that
 - 2.2.1 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.
 - 2.2.2 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.
 - 2.2.3 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.
 - 2.2.4 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.

- 2.2.5 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.
- 2.3 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.
- 2.4 The total assessable value of the BE items so imported is ₹1,28,82,245/- and it appears that a short levy of BCD and/or IGST amounting to ₹25,08,173/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.
- 2.5 In view of the above, Consultative letter No. 2598 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.
- 2.6 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:
- 2.7 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 duty amount has not been paid correctly.
- 2.8 **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.'
- 2.9 **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 misstatement 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. '

2.10 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.'

2.11 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;'

2.12 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.'

2.13 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.'

2.14 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

2.15 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 ₹25,08,173/- (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.

2.16 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.

- 2.17 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.
3. In view of the above, the importer, M/s. BRIGHT BEGININGS PRIVATE LIMITED (IEC- AAGCB2639D) was called to show cause, as to why:
- (i) The declared IGST under Sl. No. 203 of Schedule II and/or Sl. Nos. 376AA or 376AAA of Schedule III of IGST Notification No. 19/2018-Integrated Tax (Rate) dated 27.07.2018 should not be rejected and re-determined levy of BCD and IGST as per Table-A above.
 - (ii) Differential/short paid Duty amounting to **₹25,08,173/-** 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.
 - (iii) 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.
 - (iv) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of **₹1,28,82,245/-** should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
 - (v) 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.
 - (vi) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

PERSONAL HEARING & WRITTEN SUBMISSION

4. In order to comply the principal of natural justice, opportunities of personal hearing in the matter were provided to the Importer vide letter F. No. S/10-344/2024-25/ADC/NS-V/CAC/JNCH dated 27.05.2025, 17.06.2025 and 01.07.2025 to appear before the adjudicating authority on 17.06.2025, 01.07.2025 and 10.07.2025, for their oral/written submission against the subject show cause notice. However, no one attended the personal hearing on any of the above dates. Despite the sufficient number of opportunities for personal hearing given to the Importer, they have neither attended the personal hearing nor submitted any written reply in their defense. There is no counter reply/written submission against the Show Cause Notice received from the Importer.

DISCUSSIONS AND FINDINGS

5. I have gone through the facts of the case, and material on record. I find that the Show Cause Notice proposes a recovery of differential/short paid Duty amounting to **₹25,08,173/- (Rupees Twenty-five Lakh Eight Thousand One Hundred and Seventy-three only)** under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and penalty under Section 112(a) and 114A of the Customs Act, 1962. It is also proposed that the imported goods totally valued at **₹1,28,82,245/- (Rupees One Crore Twenty-eight Lakh Eighty-two Thousand Two Hundred and Forty-five only)** should be held liable for confiscation under Section 111(o) of the Customs Act, 1962.
6. After going through the description of the BE items under deliberation, it has been observed that, the description of imported goods mentioned in Annexure-A are '**Lithium Polymer Battery Cell of various model**' which have been imported vide **Bill of Entry no. 4573569 dt. 20/08/2019**. I observe that the subject imported goods have been classified under CTH 85076000 by paying BCD @5% and IGST @18%. However, the above imported goods will attract BCD @ 20% and IGST @18% against Sr. No. 376AA of Schedule III of Notification no. 01/2017- Integrated tax (Rate) dated 28.06.2017. Therefore, the total assessable value of the BE items so imported is **₹1,28,82,245/-** and it appears that a short levy of Duty amounting to **₹25,08,173/-** as detailed in Annexure-A is recoverable from the Importer along with applicable interest and penalty.
7. I find that ample opportunities of personal hearing have been granted to the Importer to be heard in person and to submit their reply/defense submission against the Show Cause Notice. However, neither any written submission/reply to the Show Cause Notice has been submitted by the importer nor any of their representatives turned up for the said personal hearing. Therefore, I am left with no option other than to decide the case ex-parte on the basis of records available and the existing legal position at the relevant point of time.
8. It is alleged in the Show Cause Notice that the importer has wrongly cleared the impugned goods 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, whereas, the imported goods attracts levy of BCD & IGST as per Table-A below.

Table-A

Tariff Item	Description of goods	BCD % (Ntfn.)	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

9. Now the following issues emerges for decision in this case:
- Whether the importer has paid BCD @20% & IGST @18%.
 - Whether the goods are liable for confiscation under Section 111(m) and the importer is liable for penalty under Section 112(a) and 114A of the Customs Act, 1962.
10. After going detail in calculation of differential duty, as per Annexure-A of the subject SCN, I observe that the importer has paid BCD @5% and IGST @18%, whereas the differential duty has been calculated as BCD @20% and IGST @18%, as applicable during material period of time. The detailed calculation of differential duty is produced below in the table for ease of reference:-

BOE No.	Assessable Value	AS PER BOE				AS PER SCN				
		BCD @ 5%	SWS @ 10%	IGST @18%	Total paid (A)	BCD @20%	SWS@10%	IGST @18%	Total payable (B)	Total Payable
4573569	5088272.0	254413.6	25441.4	966262.9	1246117.8	1017654.4	101765.4	1117384.5	2236804.4	990686.6
4573569	2834248.0	141712.4	14171.2	538223.7	694107.3	566849.6	56685.0	622400.9	1245935.4	551828.1
4573569	2832879.0	141644.0	14164.4	537963.7	693772.1	566575.8	56657.6	622100.2	1245333.6	551561.5
4573569	2126845.0	106342.3	10634.2	403887.9	520864.3	425369.0	42536.9	467055.2	934961.1	414096.7
TOTAL	12882244.0	396126.0	39612.6	2397236.9	3154861.6	1584524.0	158452.4	2828940.8	5663034.5	2508172.9

11. I observe that as per the IGST Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017, the applicable rate of IGST for the impugned goods with description as Lithium-ion Batteries was @18% during the material period. Relevant entries of the said Notification dt. are reproduced below for ease of reference.

Schedule	Sr. No.	Chapter/Heading/Subheading/ Tariff item	Description of Goods	IGST
III	376AA	85076000	Lithium-ion Batteries.	18%

12. I find that importer has cleared the impugned goods i.e. Lithium Polymer Battery Cell under Sr. no. 376AA of Schedule-III of IGST notification 01/2017, as amended with IGST @18% during the material period of time.

13. From the above table at Para 10 and the applicable IGST for the impugned goods during the material time, as discussed above, it is ample clear that the importer had paid lower rate of BCD @5% instead of correct BCD @20% for the subject import and no defense from the importer, in this regard, has been received during the entire adjudication proceedings of the subject SCN, I am of the considered view that the impugned goods will attract BCD @20% and IGST@18% during the material period of time and the differential duty, as short paid by the importer for the import of impugned goods, is recoverable.

14. I find that, 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 calculation of duty and/ or description of goods.

14.1 **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.

14.2 Further **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.

15. In view of the above, I observe that in the era of self-assessment, the onus of correct classification of goods and payment of duty thereon is on the importer. From facts above, it is clear that the said importer has mis-classified the impugned goods resulted in short levy of duty of **₹25,08,173/- (Rupees Twenty-five Lakh Eight Thousand One Hundred and Seventy-three only)**. I observe that since, the Importer has deliberately paid lower rate BCD @5% instead of correct BCD @20%, the said act of mis-classification by importer is a clear suppression of facts

and wilful mis-statement and therefore, I hold that recovery under Section 28(4) of the customs Act, 1962 is sustainable and I hold the same.

16. Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.
17. As I have already hold that the demand of duty for extended period under Section 28(4) of Customs Act, 1962 is sustainable in the case, I observe that the importer is liable for penal action under Section 114A of the Customs Act, 1962 and I hold the same.
18. As the importer, intentionally by suppressing the facts and willfully mis-statement, had mis-classified the impugned goods under incorrect CTH to take undue benefit of lower rate of duty and evaded legitimate Customs Duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable. However, I find the goods imported vide bills of entry, as detailed in Annexure-A of the SCN, are not available for confiscation and hence 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 judgment 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 III 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 the 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. We accordingly answer question No. (i)."

19. 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 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 the Hon'ble Madras High Court in the 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 the 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 hold that the impugned goods are liable for confiscation under Section 111(o) of Customs Act, 1962 and I hold the same.

20. In view of the above facts, I pass the following order:

ORDER

- I. I reject the benefit of lower rate of BCD @15% availed by the Importer and order to re-assess the Bills of Entry on BCD @20%, for goods as mentioned in Annexure-A.
- II. I order to confirm the demand of differential IGST of **₹25,08,173/- (Rupees Twenty-five Lakh Eight Thousand One Hundred and Seventy-three only)** on the goods imported vide Bills of Entry mentioned in Annexure-A above, under Section 28(4) of Customs Act, 1962 along with applicable interest on the short-levied BCD as confirmed above from the importer, under Section 28AA of the Customs Act, 1962.
- III. I order to confiscate the impugned goods having assessable value of **₹1,28,82,245/- (Rupees One Crore Twenty-eight Lakh Eighty-two Thousand Two Hundred and Forty-five only)** under Section 111(m) of the Customs Act, 1962, but since the same are not available as they have already been cleared. Hence, I impose a redemption fine of **₹12,00,000/- (Rupees Twelve Lakhs only)** under Section 125 of the Customs Act, 1962 upon **M/s. BRIGHT BEGININGS PRIVATE LIMITED**.

- IV. I order to impose penalty of ₹25,08,173/- (Rupees Twenty-five Lakh Eight Thousand One Hundred and Seventy-three only) (equivalent to differential Duty) plus interest leviable thereon, on M/s. BRIGHT BEGININGS PRIVATE LIMITED, under Section 114A of Customs Act, 1962. If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be 25% of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- V. I do not impose any penalty under Section 112 (a) of Customs Act, 1962 for reasons deliberated above.
21. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.

Encl: Annexure –A



(माजिद खान / MAZID KHAN)

संयुक्त आयुक्त सीमा शुल्क/ JT. COMMISSIONER OF CUSTOMS
सीएसी, एनएस-5, जेएनसीएच/ CAC, NS-V, JNCH

To:

M/s. BRIGHT BEGININGS PRIVATE LIMITED

H-35, West Jyoti Nagar, Loni Road, Shahdara,
Delhi -110094

Copy to:-

1. The Dy./Asstt Commissioner of Customs, Review Cell, JNCH.
2. The Dy./Asstt Commissioner of Customs, Recovery Cell, JNCH.
3. The Dy./Asstt. Commissioner of Customs, Group VA, JNCH.
4. The Dy. /Asstt. Commissioner of Customs, AUDIT, Circle D-1, JNCH
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH..for uploading on website.
6. Notice Board (CHS Section), JNCH.
7. Office Copy.

IEC Name	BE Number	BE Date	Full Item Description	Assessable Value Amount	Total Duty Amount	DUTY APPLICABLE @43.96	DIFFERENTIAL DUTY
BRIGHT BEGININGS PRIVATE LIN	4573569	20-08-2019	PB 10 K1 LITHIUM POLYMER BATTERY CELL/	15088272	1246118	2236804	990686.5
BRIGHT BEGININGS PRIVATE LIN	4573569	20-08-2019	PB 20 K1D LITHIUM POLYMER BATTERY CELL	2834248	694107.3	1245936	551828.2
BRIGHT BEGININGS PRIVATE LIN	4573569	20-08-2019	PB 10 K1S LITHIUM POLYMER BATTERY CELL	2832879	693772.1	1245334	551561.5
BRIGHT BEGININGS PRIVATE LIN	4573569	20-08-2019	PB 10 K1D LITHIUM POLYMER BATTERY CELL	2126845	520864.4	934961.2	414096.8
BRIGHT BEGININGS PRIVATE LIMITED Total				12882245	3154862	5663035	2508173

True
copy
JH
11/24
Sup #1

