



ऑफिस ऑफ द कमिशनर ऑफ कस्टम्स
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-V
जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA,
ताल-ऊरण, डिस्ट-राइगड, महाराष्ट्र-४००७०७.
TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.

F. No.: S/10-11/2025-26/ADC/GrVB/NS-V/CAC/JNCH

Date of Order: 10.10.2025

Date of issue: 10.10.2025

Passed By: **Shri Satish Kumar**

Additional Commissioner of Customs, NS-V

DIN- **2025/078 NX00004454D6**

Order-In-Original No. 954 /2025-26/ADC/GR.VB/NS-V/CAC/JNCH

(Arising out of SCN No. 36/2025-26/ADC/Gr.VB/NS-V/CAC/JNCH dated 09.04.2025)

Noticee: **VIGILANT HEALTHCARE PRIVATE LIMITED (IEC:AAGCV2359E)**

मूलआदेश

- यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निः शुल्क 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 - रायगड, 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 कास्टांप 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 स्टांप 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.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.
- 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 Case

Whereas, VIGILANT HEALTHCARE PRIVATE LIMITED (IEC:AAGCV2359E) having address at 519, MR5 Mahalakshmi Nagar Indore, MP-452001(hereinafterreferred to as 'the importer') had cleared their imported items (hereinafter referred to as 'the subject goods') vide Bill of Entry No.5743775dated29-4-2023 filed by the importer through CB M/s. SURYA SHIPPING SERVICES. The Bill of Entry was given Out of Charge manually as per Public Notice No. 28/2023 dated 06.04.2023 due to issue faced in stabilization of Electronic Cash Ledger (ECL) facility.

2. As per record available on ICEGATE portal and ICES 1.5 system, the status of duty payment of the subject Bill of Entry is not reflecting.

3. Further, non-payment of Customs duty towards the goods covered under the Bill of Entry No 5743775 dated29-4-2023 amounting Rs.15,72,034/- along with applicable interest attracts fine and penalty wherever applicable as per penal provisions under the Customs Act, 1962.

4. Relevant Legal Provisions:

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).

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 percent and not exceeding thirty-six percent 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.

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.

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 four lakh rupees.

5. Acts of omission and commission by the Importer:

The importer failed to deposit the duty. Therefore, 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. 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 114 A of the Customs Act, 1962.

6. Therefore, in terms of Section 28(4) of the Customs Act, 1962 the importer **M/s. VIGILANT HEALTHCARE PRIVATE LIMITED(IEC:AAGCV2359E)** is hereby called upon to show cause to the Competent Authority, the Additional Commissioner of Customs, Gr-Vb, NS-V, JNCH, Nhava Sheva within 30 days of the receipt of the notice, as to why:

- i. Duty amount of Rs15,72,034/- (Rupees Fifteen Lakhs Seventy two Thousands Thirty Four only) with respect to the items covered under subject Bill of entry 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.**
- ii. Penalty should not be imposed on the under Section 114(A)& 117 of the Customs Act, 1962.**

RECORDS OF THE PERSONAL HEARINGS AND WRITTEN SUBMISSION

7. In order to comply with the Principles of Natural Justice, letters dated 12.06.2025, 08.07.2025 and 17.07.2025 were issued to the noticee, **M/s. VIGILANT HEALTHCARE PRIVATE LIMITED (IEC:AAGCV2359E)** requesting them to appear before the Adjudicating Authority for 18.06.20205, 15.07.2025 and 24.07.2025. However, no one appeared for the said hearings respectively. Despite these ample of opportunities, the noticee did not appear for any of the scheduled hearings.

DISCUSSION AND FINDINGS

8. I have carefully gone through the SCN, facts of the case, and available records of the case. The case was examined in the light of the evidences available and applicable laws/rules.

8.1 I find that the subject SCN was issued on 09.04.20205 and in terms of principle of natural justice, Personal Hearings (PHs) were granted to the Noticee and PH intimation letters were issued vide speed post.

8.2 I find that in the instant case, in compliance of provisions of Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, three Personal Hearings (03 PHs) were granted to the Noticee and PH intimation letters were issued to the registered address via speed post. However, the noticee neither appeared before me in those PH granted to them nor submitted any letter or email in response to the PH intimations. Also, no written submission in defence to the allegations made in the SCN has been made by the noticee till date. From the aforesaid facts, it is observed that sufficient opportunity has been given to the Noticee but they chose not to join the adjudication proceedings. As I am bound by the time limit prescribed under Section 28(9) of the Customs Act, 1962, so even in absence of the Noticee from adjudication proceedings, I am compelled to decide the matter in time bound and logical manner. It is observed that the PH letters were sent on the address given in the SCN. If there was any change of address, the Noticee should have informed the Department, so that said PH letters could have been served to them on that address. Considering the aforesaid scenario, there is no option left for me but to proceed with the adjudication proceedings ex-parte in respect of the noticee, in terms of merit of the case based on the facts available in the case record. With regard to proceeding to decide the case exparte, support is drawn from the following case law-

(i) Hon'ble High Court of Allahabad in its decision in the case of Modipon Ltd. vs CCE, Meerut reported in 2002 (144) ELT 267 (All.) effectively dealt with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference.

"Natural justice - Hearing - Adjournment- Adjudication - Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them - What is imperative for the authorities to afford the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the

flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.

Natural justice - Hearing - Adjudication - Requirement of natural justice complied with if person concerned afforded an opportunity to present his case before the authority - Any order passed after taking into consideration points raised in such application not invalid merely on ground that no personal hearing had been afforded, all the more important in context of taxation and revenue matters. [1996 (2) SCC 98 relied on] [para 22]".

8.3 It is further observed that the Noticee did not participate in the adjudication proceedings inspite of the fact of service of several letters for personal hearings in terms of Section 153 of Customs Act. Section 153 of the Customs Act reads as under –

SECTION 153. Modes for service of notice, order, etc. - (1) An order, decision, summons, notice or any other communication under this Act or the rules made there under may be served in any of the following modes, namely: -----

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticee, but they did not respond as they did not have anything to submit in their defence.

8.4 It is pertinent to refer to the case of Sumit Wool Processors v. CC, NhavaSheva 2014 (312) E.L.T. 401 (Tri. - Mumbai) wherein the Hon'ble CESTAT, Mumbai has observed that Natural justice not violated when opportunity of being heard given and Notices sent to addresses given by the Noticee. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and a principle of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law.

Accordingly, we reject the plea made by them in this regard." 2014 (312) E.L. T. 401 (Tri. - Mumbai)".

9. I find that in the instant case, the importer had imported certain goods vide Bill of Entry No. 5743775 dated 29.04.2023 through Customs Broker M/s. SURYA SHIPPING SERVICES. The Bill of Entry was given Out of Charge manually as per Public Notice No. 28/2023 dated 06.04.2023 due to issues faced in stabilization of the Electronic Cash Ledger (ECL) facility.

9.2. I find that as per records available on ICEGATE and ICES 1.5 systems, the status of duty payment for the subject Bill of Entry was not reflected. Consequently, the Customs duty amounting to Rs. 15,72,034/- along with applicable interest was found unpaid, rendering the importer liable to duty demand under Section 28(4) of the Customs Act, 1962 and penal consequences under Sections 114A and 117 of the Act.

9.3. Accordingly, Show Cause Notice No. 36/2025-26/ADC/Gr. VB/NS-V/CAC/JNCH dated 09.04.2025 was issued to the importer proposing recovery of Customs duty along with interest and imposition of penalty under the said provisions.

10. After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962, as well as Noticee' written submissions and documents / evidences available on record

(i) Whether the importer, M/s. Vigilant Healthcare Pvt. Ltd., has failed to discharge Customs duty liability amounting to Rs. 15,72,034/- in respect of the imported goods covered under Bill of Entry No. 5743775 dated 29.04.2023

(a) I find that as evident from the SCN and ICEGATE records, the Bill of Entry in question was manually cleared under transitional arrangements due to temporary technical difficulties with the ECL module. The Out-of-Charge was granted manually with the expectation that the importer would subsequently discharge the Customs duty liability through the ECL system. However, even after the stabilization of the ECL facility, the importer did not deposit the duty amount. No proof of duty payment has been produced by the importer at any stage of the proceedings till date.

(b) Further, I find that the failure to pay the assessed Customs duty, despite having obtained clearance of goods, amounts to non-payment within the meaning of Section 28(4) of the Customs Act, 1962. This section empowers

recovery of duties not paid or short paid due to omission, suppression, or any willful act of non-compliance. The importer, being a registered entity regularly engaged in import operations, is presumed to be fully aware of statutory requirements and cannot plead ignorance. Therefore, I hold that the importer has failed to fulfill the obligation to pay duty correctly, and recovery of Rs. 15,72,034/- is warranted under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA.

(ii) Penalty should not be imposed on the under Section 114(A) & 117 of the Customs Act, 1962.

(a) The provisions of Section 114A stipulate a mandatory penalty equivalent to the duty determined under Section 28(4) where such duty has not been paid by reason of willful act or omission. In the present case, despite being issued with a detailed SCN and granted multiple personal hearings, the importer neither responded nor produced any evidence of bona fide intent. This inaction indicates deliberate disregard of statutory obligations. Therefore, the importer is liable to a penalty equal to the amount of duty confirmed, i.e., Rs. 15,72,034/- and interest under Section 114A of the Act.

(b) In addition, Section 117 provides a residual penalty for contraventions not specifically covered elsewhere. The importer's failure to comply with procedural requirements such as duty payment and communication with Customs authorities constitutes such contravention. Hence, a penalty under Section 117 is also justified.

11. From the above discussion, it is established that the importer failed to pay Customs duty of Rs. 15,72,034/- despite having obtained manual Out-of-Charge. The non-payment has continued despite repeated departmental communication, confirming deliberate omission. The importer is liable to pay the duty with interest and penalty under Sections 28(4), 28AA, and 114A of the Customs Act, 1962. Adequate opportunities for representation were given and thus, natural justice requirements stand fulfilled.

12. In view of these findings, I hold that the charges levelled in the Show Cause Notice stand established beyond doubt. The duty amount with applicable interest and penalties are recoverable from M/s. Vigilant Healthcare Pvt. Ltd.

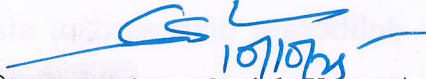
13. In view of the above discussions, I pass the following order:

- I. I confirm the demand of Customs duty amounting to Rs. 15,72,034/- (Rupees Fifteen Lakhs Seventy-Two Thousand Thirty-Four Only) under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962, recoverable from M/s. VIGILANT HEALTHCARE.**

II. I impose a penalty of ₹Rs. 15,72,034/- (Rupees Fifteen Lakhs Seventy-Two Thousand Thirty-Four Only) and interest under Section 114A of the Customs Act, 1962, with benefit of 25% reduction if paid within 30 days.

III. I impose a penalty of Rs. 1,00,000/- (Rupees One lakhs only) under Section 117 of the Customs Act, 1962.

14. 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 any other law for the time being in force in the Republic of India.


(डॉ. सतीश कुमार / Dr. Satish Kumar)

अतिरिक्त आयुक्त, सीमा शुल्क / Additional Commissioner of Customs
ग्रुप-VB, एनएस-V, जेएनसीएच / Gr.VB, NS-V, JNCH

To,

VIGILANT HEALTHCARE PRIVATE LIMITED(IEC:AAGCV2359E)

519, MR5 Mahalakshmi Nagar Indore, MP-452001

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