

	सीमाशुल्कआयुक्तकाकार्यालय, एनएस-III OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707 NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707
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File No: S/26-Misc-433(60)/2024-25/GR.III/JNCH

Date : 01.09.2025

SCN No: 740/2024-25/Commr./Gr.III/NS-III/CAC/JNCH dated 15.07.2024.

DIN	:	20250978NX000000F2E9
	आदेशकीतिथि	: 28.08.2025
	Date of Order	
	जारीकिएजानेकीतिथि	: 01.09.2025
	Date of Issue	
आदेशसं.	:	184/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच
Order No.	:	184/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता	:	श्रीविजयरिशी
Passed by	:	SH. VIJAY RISI
	:	आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावाशेवा
	:	Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसीकानाम	:	मेसर्स आर्ट पैलेस एक्सपोर्ट प्राइवेट लिमिटेड
Name of Party/Noticee	:	M/s. Art Palace Export Private Limited

मूलआदेश

ORDER-IN-ORIGINAL

1. इस आदेश की मूल प्रतिकी प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९को अपील कर सकता है, जो उक्तअधिकरण के सहायकरजिस्ट्रार को संबोधित होगी।

Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

फार्म : फार्मन .सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके
Form खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)

	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर
Time Limit	Within 3 months from the date of communication of this order.
फीस	: (क) एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है।
Fee	(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है। (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो।
Mode of Payment	A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
General	For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्तिका ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी ।

Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129 of the Customs Act 1962.

F.No. S/26-Misc-433(60)/2024-25/GR.III/JNCH
SCN NO. 740/2024-25/Commr./Gr.III/NS-III/CAC/JNCH dated 15.07.2024.

Brief Facts

A SCN NO. 740/2024-25/Commr./Gr.III/NS-III/CAC/JNCH dated 15.07.2024 was issued to that M/s. Art Palace Export Private Limited (IEC:1507003153) having address as Fattupur Mondh Road, Bhadohi, Sant Ravidas Nagar, Uttar Pradesh, PIN – 221401 on the basis of Analytics Report 09/2020-21 dated 25/03/2021 issued by the NCTC, Mumbai, on the issue of **“Wrong claim of concessional rate of BCD for “Wool Tops” vide Sl.No.310 of Notification No.50/2017-Customs dated 30.06.2017”**, the data pertaining to imports under CTH 51053900 made by the importer **M/s. Art Palace Export Private Limited**, through JNCH (INNSA1) was analysed in detail. It was observed that M/s. Art Palace Export Private Limited (IEC:1507003153) have imported goods by claiming benefit of Sl. No. 310 of Notification No. 50/2017-Customs dated 30.06.2017.

2. It was noted that the item “Wool Top”, which was specifically covered under tariff line 5105.29.10 of heading 5105, is eligible for concessional rate of BCD against Sl. No. 310 of Notification No. 50/2017-Customs dated 30.06.2017.

3. This Entry, initially, has granted the concessional rate of BCD as in excess of 5% for the period from 01.07.2017 to 05.07.2019. With effect from 06.07.2019, the concession has been further increased by reducing applicable BCD rate from 5% to 2.5% (*Sl.No.27 of Notification No.25/2019-Customs dated 06.07.2019 refers*). Effective rate of duty as provided under the said Sl. No. is reproduced below:

310	5105	Wool Tops	(5%) * 2.5% * Substituted vide Notn. No. 25/2019-Customs dated 6.7.2019
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4. The scope of Entry 310 of Notification 50/2017 was examined in the context of the respective meaning of the expressions “WOOL” and “FINE ANIMAL HAIR”, as provided in the notes to Chapter 51.

It is seen that as per note (a) to Chapter 51, “*wool*” means “*the natural fiber grown by sheep or lambs*”. (*emphasis supplied*),

whereas note (b) of chapter 51 defines “*fine animal hair*” by differentiating the same from wool of CH note 51(a) as the hair of alpaca, llama, vicuna, (including camel dromedary), yak, Angora, Tibetan, Kashmir or similar goats (but not common goats), rabbit (including Angora rabbit), hare, beaver, nutria or musk-rat.

It is worth noting that “**Mohair**” means fabric or yarn made from the hair of the Angora goat. **Alpaca** is a species of South American camelid mammal and **llama** is also a domesticated South American camelid though different than Alpaca.

5. A harmonized reading of Notes (a) and (b) to Chapter 51 makes it clear that since fine animal hair of “alpaca, mohair (angora) Kashmir (cashmere), llama etc.”, are not grown by sheep or lambs, the same are not eligible for concessional BCD rate under Sl.No.310 of Notification No. 50/2017, as this exemption is specifically limited only to tops made of wool.

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6. The Importer while filing the Bills of Entry as detailed in annexure-A described the item as “ROW WOOL OF GOOD WHITE ADULT MOHAIR TOP MIC 34.8. [THIS IS NOT CARDED AND COMBED]” with CTH 5105 39 00 which attracts BCD @ 20%. The Importer must have gone through the Notification No. 50/2017-Cus., and, still they chose to claim the benefit of notification which is available only to items with description as “Wool Tops”. This as per the SCN amounted to collusion, wilful mis-statement and suppression of facts in order to evade Customs duty and causing a loss to the Government exchequer.

7. The total assessable value of the goods so imported is Rs.2,56,08,488/- and it appeared that a short levy of duty amounting to Rs. **51,76,116/-** (as detailed in Annexure-‘A’) is recoverable from the Importer along with applicable interest and penalty as described .

Annexure A

S r. no	BE no & Date	Ass. Value	Amt of BCD 2.5%	SWS @ 10%	IGST @5%	Amt of Total Assessed	Duty Foregone under Lic.	Duty Foregon e Amt	total amt of duty paid	BCD payabl e @20%	SWS	IGST	Total Duty	Differe ntial Duty
1	4034 732 dt 12.07.19	3889 406	97235. 15	9723. 51	19981 8.2	30677 6.89	LC 36= MEIS (BCD+S WS)	106958 .66	19981 8.23	77788 1.2	77788 .12	237253 .8	109292 3.09	786146.1 8
		2223 43	5558.5 75	555.8 5	11422 .87	17537.30	LC 36= MEIS (BCD+S WS)	6114.4 3	11422. 871	44468 .6	4446. 86	13562. 92	62478.3 83	44941.08
2	5545 578 dt 04.11.19	1821 6	455.4	45.54	935.8 47	1436.787	LC 36= MEIS (BCD+S WS)	500.94	935.84 7	3643. 2	364.3 2	1111.1 76	5118.69 6	3681.90
		4081 555	10203 8.87	10203 .88	20968 9.9	321932.65	LC 36= MEIS (BCD+S WS)	112242 .76	20968 9.88	81631 1	81631 .1	248974 .9	114691 6.96	824984.3 0
3	6081 584 dt 14.12.19	4079 559	10198 8.97	10198 .89	20958 7.3	321775.21	LC 36= MEIS (BCD+S WS)	112187 .87	20958 7.34	81591 1.8	81591 .18	248853 .1	114635 6.08	824580.8 6
4	6508 303 dt 17.01.20	4257 622	10644 0.55	10644 .05	21873 5.3	335819.93	LC 36= MEIS (BCD+S WS)	117084 .60	21873 5.33	85152 4.4	85152 .44	259714 .9	119639 1.78	860571.8 4
5	7213 802 dt 12.03.20	4423 815	11059 5.37	11059 .53	22727 3.5	348928.40	LC 36= MEIS (BCD+S WS)	121654 .91	22727 3.49	88476 3	88476 .3	269852 .7	124309 2.02	894163.6 0
6	7446 100 dt 14.04.20	4635 972	11589 9.3	11589 .93	23817 3.1	365662.29	LC 36= MEIS (BCD+S WS)	127489 .23	23817 3.06	92719 4.4	92719 .44	282794 .3	130270 8.13	937045.8 4

In all the above said bills of entry the importer has declared description of the goods as RAW WOOL OF GOOD WHITE ADULT MOHAIR TOP MIC 34.8. and CTH as 5105 39 00.

8. In view of the above, Consultative Letter bearing No.316/2024-25/D, dated 10.07.2024 was issued to the 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 along with applicable interest and penalty.

9. Relevant legal provisions for recovery of duty that appear to have been evaded are reproduced here which are applicable in the instant case:

9.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly. **Section 17 (Assessment of duty)**, subsection (1) reads as:

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‘An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.’

9.2 Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded) reads as:

‘(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or*
- (b) any 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. ’

9.3 Section 28AA- Interest on delayed payment of duty, reads as:

(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.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

9.4 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.’

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9.5 Section 111 (Confiscation of improperly imported goods etc.) reads as:

'The following goods brought from a place outside India shall be liable to confiscation:

(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;'

9.6 Section 112 (Penalty for improper importation of goods etc.) reads as:

'Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, 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.'

9.7 Section 114A (Penalty for short-levy or non-levy of duty in certain cases):, reads as –

'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.'

9.8 Section 114AA- Penalty for use of false and incorrect material, reads as –

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.]

9.9 Section 117- Penalties for contravention, etc., not expressly mentioned. , reads as-

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 1[four lakh rupees].

10. Consequent upon amendment to 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 (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

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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

11. Therefore, in view of the above facts, it appeared 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 Rs.51,76,116/- (as detailed in Annexure-‘A’). Therefore, the differential duty, not so paid, is liable to be recovered 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.

12. 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. Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

13. It appeared that the Importer has failed to comply with the conditions mentioned above; therefore, it also appeared that the imported goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

14. It further appeared 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.

15. Therefore, in exercise of the powers conferred by Section 28(4) of the Customs Act, 1962, **M/s. Art Palace Export Private Limited**, situated at Fattupur Mondh Road, Bhadohi, Sant Ravidas Nagar, Uttar Pradesh, 221401 were called upon to show cause to the Commissioner

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of Customs, NS-III, JNCH, Nhava-Sheva, Tal-Uran Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:

- (i) Differential/short paid Duty amounting to **Rs.51,76,116/-** for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act. 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ having assessable value of Rs. 2,56,08,488/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

WRITTEN SUBMISSION

16. M/s Art Palace Submitted the following written submission dated 21.07.2025.

- Consultative letter No.2070/2021-22/B2, Dt.12.07.2021 (attached) issued by Audit department and letter vide F.N: S/26/-misc-22/2021-22/Gr-III/JNCH issued by the Group, wherein calculation sheet was provided by the officer(BCD@10%), in which differential duty of Rs.23,44,985/- along with interest of Rs.6,17,111/-was demanded .We have paid BCD@10% as directed by the department and as per calculation sheet provided by the officer. They have paid Rs.23,44,985/- along with Interest of Rs.6,17,111/- vide Challan Dt.13.07.2021 and Rs.784805/- along with Interest of Rs.342879 vide Challan Dt.23.02.2023.
- Thereafter they have received Demand-cum Show cause letter Dt.15.07.2024 (attached) from Group III and Consultative letter no.316/2024-25/D, Dt.10.07.2024 from Audit department wherein same issue and same bill of entries (as mentioned in Annexure-A) Awere covered as mentioned in the Consultative letter No.2070/2021-22/B2, Dt.12.07.2021 (attached), However BCD rate in their calculation was erroneously taken as 20% instead of 10% (For CTH 51053900, Effective rate of duty is 10%, Please refer Customs notification 82/2017, Dt.27.10.2017-attached).
- They vide our letter 05.08.2024 (Copy attached) to the Audit Department (Circle D) JNCH, have already intimated this discrepancy in BCD rate and requested to drop/Close the Demand as we had already paid the demanded differential duty with interest.
- Further, they vide our letter Dt:27.07.2024 submitted to Group III and their letter Dt: 10.08.2024 submitted to Centralised Adjudication Cell, JNCH , they requested to issue closure letter as we had already paid the demanded differential duty with interest.
- Also they state that, in the calculation sheet provided by the officer in Consultative letter No.2070/2021-22/B2, Dt.12.07.2021 (attached) issued by Audit department and letter vide F.N: S/26/-misc-22/2021-22/Gr-III/JNCH issued by the Group III , **Erroneously excess duty and interest was collected from us (as mentioned in Annexure-B)**,as they did not take in account the duty amount paid through the Licenses/Scripts utilised in the respective Bill of entries.

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- Now, they make an humble request to drop the demand and issue closure letter as we have already paid Differential and Duty along with interest. Our Business has already been severely impacted after Covid and we still are in our recovery phase, Request for your kind co-operation.

PERSONAL HEARING

17. Shri Dhananjay Pabale Authorized Representative of the noticee appeared before me on 21.07.2025 and submitted the following:-

- He submitted a copy of his written submission dated 21.07.2025 during the Personal Hearing and reiterated the same.
- He stated that Noticee has paid the duty of Rs.31,29,790/- and interest of Rs. 9,59,990/-

DISCUSSIONS AND FINDINGS

18. I have carefully gone through the Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), Defence submissions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

Principles of natural justice

19. In compliance of the provisions of Section 28(8) the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee and Personal Hearing was attended by the authorized representative of the Noticee on 19.08.2025. The Authorized Representatives of Noticee reiterated their written submissions and confirmed that nothing more they want to add to their submissions. I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. Vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

20. Framing of issues

Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- a. As to whether the differential/short paid Duty amounting to **Rs.51,76,116/-** for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ should be demanded under Section 28(4) of the Custom Act, 1962 along with the applicable interest under section 28AA of the Customs Act. 1962.
- b. As to whether the said subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ having assessable value of Rs. 2,56,08,488/- should be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- c. As to whether Penalty should be imposed on them under Section 112(a) and 114A of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation.
- d. As to whether Penalty should not be imposed under Section 114AA of Customs Act, 1962 for short levy of duty.

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a. **Now I take up the first question as to whether the differential/short paid Duty amounting to Rs.51,76,116/- for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ should be demanded under Section 28(4) of the Custom Act, 1962 along with the applicable interest under section 28AA of the Customs Act. 1962.**

21. I observe that the case arises from the analysis conducted in Analytics Report No. 09/2020-21 dated 25.03.2021 issued by NCTC, Mumbai, regarding wrongful availment of concessional BCD under Sl. No. 310 of Notification No. 50/2017-Customs dated 30.06.2017, which pertains exclusively to goods described as “Wool Tops” under Tariff Item 5105.29.10.

21.1 The noticee, M/s. Art Palace Export Private Limited located at Fattupur Mondh Road, Bhadohi, Sant Ravidas Nagar, Uttar Pradesh – 221401, has imported consignments of “RAW WOOL OF GOOD WHITE ADULT MOHAIR TOP MIC 34.8 [not carded and combed]”, classifying the goods under CTH 5105.39.00, but claimed the benefit of concessional BCD under Sl. No. 310 as applicable to “Wool Tops”.

310	5105	Wool Tops	(5%) * 2.5% * Substituted vide Notn. No. 25/2019-Customs dated 6.7.2019
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21.2 I observe that as per the explanatory notes to Chapter 51 of the First Schedule to the Customs Tariff Act:

- Note (a) defines “Wool” as the natural fiber grown by sheep or lambs.
- Note (b) defines “Fine Animal Hair” which clearly differentiates the same from wool of Chapter note 51(a) as the hair of alpaca, llama, vicuña, Angora (Mohair) goats, rabbit (including Angora rabbit), hare, etc., thereby excluding such fibers from the definition of “wool.”

21.3 I further observe that Mohair is obtained from Angora goats, does not fall within the scope of “wool” for customs classification purposes and is instead classified as “fine animal hair.” Therefore, products such as “Mohair Tops” do not qualify as “Wool Tops” and are ineligible for exemption under Sl. No. 310 of Notification No. 50/2017-Customs.

21.4 I further observe that the above notification which is applicable to the wool initially allowed BCD at 5% for Wool Tops and was subsequently amended to 2.5% via Notification No. 25/2019-Cus dated 06.07.2019. However, this concessional rate is restricted only to goods classified under Tariff Item 51052910—i.e., Wool Tops, and not to goods under 51053900, which includes other fine animal hair tops, including mohair.

21.5 I further observe that the description declared by the importer in the Bills of Entry was:

“RAW WOOL OF GOOD WHITE ADULT MOHAIR TOP MIC 34.8 [THIS IS NOT CARDED AND COMBED)”
This clearly indicates the product imported is Mohair i.e. fine animal hair and not Wool. The fact that the goods were imported under CTH 51053900—which covers fine animal hair—further affirms that the goods are not eligible for the benefit under Sl. No. 310.

21.6 I find that goods imported by the noticee were declared as “RAW WOOL OF GOOD WHITE ADULT MOHAIR TOP MIC 34.8 [NOT CARDED AND COMBED)” and were classified under CTH 51053900, which pertains to tops of other fine animal hair. I find that, it is evident from the description and classification adopted that the imported goods were mohair tops derived from Angora goats, and not “Wool Tops” derived from sheep or lambs. As per the explanatory notes to Chapter 51 of the First Schedule to the Customs Tariff Act, 1975, “wool”

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refers exclusively to fiber from sheep or lambs, whereas mohair, obtained from Angora goats, falls under the category of “fine animal hair” and therefore are excluded from the definition of wool. Therefore, the goods in question do not fall within the ambit of "Wool Tops" as covered under tariff item 51052910.

21.7 I find that the concessional rate of Basic Customs Duty (BCD) under Sl. No. 310 of Notification No. 50/2017-Customs dated 30.06.2017 (as amended by Notification No. 25/2019-Cus dated 06.07.2019) is specifically applicable only to “Wool Tops” classified under tariff item 5105.29.10. Since the imported goods are correctly classifiable under tariff item 51053900, therefore they are not eligible for the concessional BCD under the said notification. In light of the foregoing, I find that the noticee has wrongly availed the benefit of concessional BCD under Sl. No. 310 of Notification No. 50/2017-Customs by misclassifying mohair tops as wool tops. This amounts to misdeclaration and misuse of exemption notification, resulting in short payment of customs duty.

21.08 In this regard, I observe and find that there is no dispute about the fact and the charges made in the SCN to the effect that the imported goods are not Wool Tops but are Tops of fine animal hair and therefore, same are not eligible for the benefit of SL No 310 of the Notification No 50/2017 dated 30.06.2017. The noticee has not contended the same.

21.09 In this regard, I find that the goods classified under CTH 51053900 attracts Basic Customs Duty @ 20% in consonance with the notification no. 80/2017-Customs dated 27.10.2017. The relevant part of the notification is reproduced below:-

2)in Chapter 51,-

(ii) for the entry in column (4) occurring against all the tariff items of headings 5104, 5105, 5106, 5107 and 5108, the entry “20%” shall be substituted;

21.10 However, the noticee has contended that vide Consultative letter No.2070/2021-22/B2, Dt.12.07.2021 wherein as per the calculation sheet BCS was 10 % and they have paid the differential duty of Rs.23,44,985/- along with interest of Rs.6,17,111/-, now they have received another Consultative letter no.316/2024-25/D, Dt.10.07.2024 for the same Bills of Entry where in the duty amount has been demanded considering BCD@20%.

21.11 In this regard, I find that there is no dispute about the fact that the goods are rightly classifiable under CTH51053900. Now only remaining question is as to at what rate duty is chargeable on the imports made by the noticee.

In this regard, I find that in Customs Notification No. 80/2017-Customs dated 27th October 2017 as mentioned at para 21.09, it is explicitly stated that the entry in column (4) against all tariff items falling under headings 5104, 5105, 5106, 5107, and 5108 shall be substituted with “20%”. Since the imported goods in question are rightly classified under CTH 5105, they are liable to attract Basic Customs Duty at the rate of 20%. The provisions of the said notification prescribing duty @ 20% are very clear and unequivocal involving no issue and interpretation.

21.12 In view of the above, I find that the differential/short paid Duty amounting to Rs.51,76,116/- for the goods imported vide Bills of Entry as detailed in Annexure-‘A’ should be demanded under Section 28(4) of the Custom Act, 1962 along with the applicable interest under section 28AA of the Customs Act. 1962.

b. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER THE SAID SUBJECT GOODS IMPORTED VIDE BILLS OF ENTRY AS DETAILED IN ANNEXURE-‘A’ HAVING ASSESSABLE VALUE OF RS. 2,56,08,488/- SHOULD BE HELD LIABLE

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**FOR CONFISCATION UNDER SECTION 111(M) AND/OR 111(O) OF THE
CUSTOMS ACT, 1962.**

22. I reiterate my findings at para 21, It is an undisputed fact that the importer has imported the goods by claiming wrong notification benefit. I find that the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their Bills of entry and import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an 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.

22.2 I also find that, the onus of right and proper declaration and assessment is on the importer under Section 17. Such onus has been deliberately not discharged by M/s. Art Palace Export. In terms of the provisions of Section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were mis-declared by the importer in respect of eligibility of exemption notification and mischievous and intentional usage of word “wool” in description when the goods were made of fine animal hair and not of wool.

22.3 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962. Provisions of these Sections of the Act, are reproduced herein below:

“SECTION 111. Confiscation of improperly imported goods, etc. — 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 or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54].

(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;’

22.4 In this regard, I find that the imported goods do not correspond with the description of wool used by the noticee in the subject bills of entry. Further, their claim of the beneficial notification is found to be wrong as the goods do not fulfil the condition of being ‘Wool’ i.e. the essential condition of SL No 310 of the Notification No 50/2017 dated 30.06.2017. I have already held in foregoing paras that the importer wilfully misrepresented the facts and had

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evaded correct Customs duty by intentionally taking the wrong notification benefit. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible rate of duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry, the impugned goods having a total Assessable Value of Rs. Rs. 2,56,08,488/- (Rupees Two Crore Fifty Six Lakhs Eight Thousand Four Hundred and Eighty Eight only) are liable for confiscation under Section 111. I find that Show Cause Notice has proposed confiscation under section 111(m) and section 111(o) of the Customs Act, 1962. I find that acts of omission and commission on part of the importer has rendered the goods liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, I find the goods are liable for confiscation under section 111(o) of the Customs Act, 1962.

22.5 I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(m) and 111(o) of the Customs Act, 1962, as proposed in the Show Cause Notice. The subject goods imported 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 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 regularised, 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 authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation 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 from Section 111 only. Hence, 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. We accordingly answer question No. (iii).”

22.5.1 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.).

22.5.2 I also 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.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

22.5.3 It is established under the law that the declaration under section 46 (4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section

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111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. As reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon’ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon’ble Supreme Court in the case of Weston Components.”

22.5.4 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.

22.6 In view of above facts, findings and legal provisions, I find that it is an admitted fact that the noticee has taken the wrong notification benefit. Therefore, I hold that the acts and omissions of the importer, by way of collusion and wilful mis-statement of the imported goods, have rendered the goods liable to confiscation under section 111(m) and 111(o) of the Customs Act, 1962. **Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.**

- c. **NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER PENALTY SHOULD BE IMPOSED ON THEM UNDER SECTION 112(A) AND 114A OF THE CUSTOMS ACT, 1962 FOR THEIR ACTS OF OMISSION AND COMMISSION, IN RENDERING THE GOODS LIABLE FOR CONFISCATION.**

23. As per my detailed findings in paras 21 and 22 above, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

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23.1. I reiterate my findings from paras 21 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A / 112 (a) of the Customs Act, 1962 are reproduced as under: -

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 3 [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.]

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SECTION 112. Penalty for improper importation of goods, etc. — 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*

23.2 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors. [2003 (8) SCC 319].

32. ‘‘Fraud’’ and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung case, Hon’ble Tribunal held as under.

“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by ‘‘fraud’’ is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. ‘‘Fraud’’ involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a ‘‘fraud’’ is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: S.P. Chagalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC

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311], *Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu's case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd.* - 1996 (86) E.L.T. 460 (S.C.) and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd.* - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non-est. So also, no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of *Chengalvaraya Naidu* reported in (1994) 1 SCC 1: AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: *S.P. Chengalvaraya Naidu v. Jagannath*, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: *Commissioner of Customs v. Essar Oil Ltd.*, (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnniy.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

23.3 As explained above, it is conclusively established that the importer M/s. Art Palace Export Pvt Ltd. has mis declared the goods and take the wrong notification benefit to evade appropriate Customs Duty. Thus, the importing firm has deliberately mis declared the goods and evaded the duty of Rs.51,76,116/- (Fifty One Lakhs Seventy Six Thousand One Hundred sixteen only) in respect of bills of entry mentioned in Annexure A, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962. Consequently, the importing firm is liable for penalty under Section 114A of the Customs Act, 1962.

23.4 Since I will be imposing penalty on the importer under Section 114A, I shall refrain from imposing Penalty under Section 112(a) of the Act on the importer, M/s. Art Palace Export Pvt Ltd., in terms of the fifth proviso to Section 114A of the Act *ibid*.

d. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER PENALTY SHOULD NOT BE IMPOSED UNDER SECTION 114AA OF CUSTOMS ACT, 1962 FOR SHORT LEVY OF DUTY ON M/S. ART PALACE EXPORT PVT LTD.

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24. Further I observe that Penal Action under Section 114 AA of the Customs Act has also been proposed against M/s. Art Palace Export Pvt Ltd.

The relevant provision of the Section 114AA of the Custom Act, 1962 is as under: -

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.

I reiterate my findings from para 21 for the question of penalty also as the same appears mutatis mutandis to this also.

24.1 I note that, The Hon’ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable 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. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer’s price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

24.2 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue-

- i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
- ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
- iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

24.3 As observed in paras above, in the instant case, there is clear evidence of fraud and suppression of facts. The Art Palace Export Pvt Ltd has cleared the imported goods by mis declaration to enrich themselves by paying less legitimate Customs Duty. Therefore, I hold that M/s. Art Palace Export Pvt Ltd is liable for imposition of penalty under Section 114AA *ibid*.

25. I find that the noticee has also mentioned that payments were made by the noticee after the receipt of Consultative Letter. Therefore, details of payments made were verified from Cash Section, JNCH. A letter vide file no S/10-61/2025-26/Commr/Gr.III/CAC/JNCH dated 14.07.2025 was sent to Administrative Officer, Cash Section, JNCH. Accordingly, AO/ Cash Section JNCH vide letter dated 15.07.2025 vide file no S/10-Gen-03/2017-18/CASH/JNCH pt.III has verified the payments as follows.

Sr. No	Challan No.	Amount
1.	HC No 166 dated 13.07.2021	23,44,985/- (Duty)
2.	HCM No. 995 dated 13.07.2021	6,17,111/- (Interest)
3.	HC No 270 dated 13.07.2023	7,84,805/-(Duty)

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4.	HCM No. 2022 dated 23.02.2023	3,42,879/-(Interest)
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As I have already held in the foregoing paras that the importing firm M/s. Art Place Export Pvt Ltd has wilfully evaded the applicable Customs duty. The importing firm evaded the duty of Rs. 51,76,116/-, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962. Therefore, I find that the total duty and interest paid as detailed above should be appropriated against the total demand of duty and interest.

26. In view of the above, I pass the following order.

- (i) I confirm the differential/short paid Duty amounting to **Rs.51,76,116/-(Rupees Fifty-One Lakh Seventy-Six Thousand One hundred Sixteen Only)** for the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ and order to recover the same under Section 28(4) of the Custom Act, 1962 along with interest on delayed payment of Custom Duty from the Importer under section 28AA of the Customs Act. 1962.
- (ii) I hold the subject goods imported vide Bills of Entry as detailed in Annexure-‘A’ having assessable value of Rs. 2,56,08,488/- held liable for confiscation under Section 111(o) of the Customs Act, 1962 and impose redemption fine of **Rs. 64,00,000/-(Rupees Sixty-Four Lakhs Only)** on M/s Art Palace Export Pvt Ltd in respect of these goods for their redemption u/s 125 of the Customs Act, 1962.
- (iii) I impose a penalty equal to differential duty of **Rs.51,76,116/-(Rupees Fifty-One Lakh Seventy-Six Thousand One Hundred Sixteen Only)** on them under Section 114A of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.

In terms of the first and second proviso to Section 114A ibid, if 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 twenty-five per cent 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.

- (iv) I impose a penalty of Rs. 25,00,000/- (**Rupees Twenty-Five Lakhs Only**) under Section 114AA of Customs Act, 1962 for short levy of duty.
- (v) I order to appropriate the amount already paid as discussed in para 25 above, against the aforesaid demand of duty, fine, penalty and interest.

Digitally signed by
Vijay Risi
Date: 28-08-2025
19:14:11
(VIJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH

To,
M/s. Art Palace Export Private Limited
Fattupur Mondh Road,
Bhadohi, Sant Ravidas Nagar,
Uttar Pradesh.
PIN – 221401.

Copy to :

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1. AC/DC, concerned Group.
2. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. Office Copy.
7. The Dy. Commissioner of Customs, Circle- A-3, Audit, JNCH
8. AC/DC, EDI, JNCH.