



आयुक्त,सीमाशुल्क (एनएस- V) कार्यालय,
OFFICE OF THE COMMISSIONER OF CUSTOMS (NS- V),
जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,
JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,
तालुका- उरण, जिला- रायगढ़, महाराष्ट्र- ४००७०७.
TALUKA- URAN, DISTRICT- RAIGAD, MAHARASHTRA -
400 707.



F. No. S/26-Misc- 898/2024-25/Gr. VA/JNCH
S/10-Adj- /2025-26 /Gr. VA/ JNCH

Date of Order: 04 /12/2025
Date of issue: /12/2025

DIN No. : 20251278 MX0000999AA3

Passed by: G V S S Sharma
Assistant Commissioner of Customs,
Gr.- VA,NS-V, JNCH, Nhava Sheva.

Order No. 1483/2025-26/AC/NS-V/CAC/JNCH

Name of Party/Noticee: M/s. HK ELECTRONICS (IEC- 310020611)

मूल आदेश

1. यह प्रतिज्ञा व्यक्तिको जारी की जाती है, और उसके उपयोग के लिए निःशुल्क दी जाती है।
2. इस आदेश के विरुद्ध अपील सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के तहत इस आदेश की सूचना की तिथि 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 शुल्क के रूप में 1.50 रुपये मात्र का स्टॉप लगाया जाएगा और साथ में यह आदेश या इसकी एक प्रति भी लगाई जाएगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय शुल्क के रूप में 1.50 रुपये का स्टॉप भी लगाया जाएगा, जैसा कि न्यायालय शुल्क अधिनियम, 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करने वाला व्यक्ति, अपील निर्णयित होने तक, शुल्क या शास्तिके संबंध में विवाद होने पर मांगे गए शुल्क का 7.5% का भुगतान करेगा, अथवा केवल शास्तिके संबंध में विवाद होने पर शास्तिका भुगतान करेगा।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies with the Commissioner of Customs (Appeal), Jawaharlal Nehru Custom House, Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.1.50 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 1.50 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
3. Any person desirous of appealing against this decision or order shall, pending the appeal, make payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute

BRIEF FACTS OF THE CASE

A Show Cause Notice No. 1485/2024-25/AC/Gr. VA/CAC/JNCH (in short 'SCN') under Section 28(4) read with Section 124 of the Customs Act, 1962 has been issued to **M/s. HK ELECTRONICS** by the Assistant Commissioner of Customs, Gr.-VA, NS-V, JNCH. The SCN has been placed before me for adjudication. Brief facts of the case as enumerated in the SCN are as under:-

Whereas, M/s. H,K, ELECTRONICS (IEC- 310020611) having address as 204, 2ND FLOOR, BUILDING NO. 10, HD CHANDARSAR ROAD, VIRAR EAST VIRAR 401305 had imported goods having description "Rechargeable Lithium Ion Cell" 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, it appeared that the subjct 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

2. From the above table, it appeared that

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

3. On scrutiny of the import data, it appeared that goods covered under CTH 8507 were cleared by declaring lower rate of BCD and/or IGST, however, it appeared that the imported goods falls under CTH 8507 & attracts levy of BCD & IGST as per Table-A above.

4. The total assessable value of the BE items so imported was **Rs. 2,30,996/-** and it appeared that a short levy of BCD and/or IGST amounting to **Rs. 20,314/-** (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.

5. In view of the above, a Consultative letter 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 along with applicable interest and penalty. However, no reply or submission is given by importer in this regard.

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:

6.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly.

Section 17 (Assessment of duty), subsection (1) reads as:

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

6.2 **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. '

6.3 **Section 46 (Entry of goods on importation)**, subsection (4) reads as:

'(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.'

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

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

(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;'

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

'Any person, -

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.'

6.6 Section 114A (Penalty for short-levy or non-levy of duty in certain cases): -

'Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.'

Acts of omission and commission by the Importer

7. 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.

8. Therefore, in view of the above, it appeared that the importer 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. 20,314/- (as detailed in Annexure-'A'). Therefore, the differential duty, so not paid, appeared 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.

9. In view of the above, the importer, M/s. HK ELECTRONICS were called to show cause to the Assistant Commissioner of Customs, Gr. VA, JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:

- (i) Differential/short paid Duty amounting to **Rs. 20,314/-** 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. 2,30,996/-** 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.

Personal Hearing and Written Submissions

10. In order to comply with the principal of natural justice, personal hearing in the matter was offered to the importer vide letter F. No. S/26-Misc-898/2024-25/Gr. VA JNCH to appear before the adjudicating authority on 12.11.2025/14.11.2025/17.11.2025 to present their case in respect of the subject show cause notice. However, no one appeared on behalf of **M/s. HK ELECTRONICS** for the personal hearing, nor sought for any extension of time and accordingly, I proceed to adjudicate the case *ex-parte* based on the records available in the file.

Discussion and Finding

11. I have carefully gone through the facts of the case, available records, submissions and evidences referred as above. The case is examined in the light of the evidence produced by the department and applicable laws/rules, written submissions made by the importer.

12. On careful perusal of brief facts of the case, I find that following main issues are involved in the case which are required to be decided:

- i) Differential/short paid Duty amounting to **Rs. 20,314/-** 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.
- ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should 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. 2,30,996/-** should 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.

13. I find that the importer 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 @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 subject goods attract levy of BCD & IGST as mentioned below:

- Battery pack of cellular mobile phones except 85076000 and 850790 (other than lithium ion) falls under CTH 8507 & attracts BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.

- Till 26.07.2018 lithium-ion battery of cellular mobile phones was classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 28% under Serial No. 139 of Schedule-IV of IGST notification No. 01/2017.
- From 27.07.2018 to 30.01.2019 lithium-ion battery of cellular mobile phones were classifiable under CTH 85076000 & attracted BCD @ 15% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.
- From 30.01.2019 till date lithium-ion battery of cellular mobile phones falls under CTH 85076000 & attracts BCD @ 20% & IGST @ 18% under Serial No. 376AA of Schedule-III of IGST notification No. 01/2017.

14. After the perusal of said Bills of entry, I find that importer has paid lower instead of applicable BCD @ 20% and IGST @ 18%

15. I find that the total assessable value of the items so imported is **Rs. 2,30,996/-** and there is a short payment of duty amounting to **Rs. 20,314/-**, which is recoverable from the Importer along with applicable interest and penalty.

16. I also find 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. 20,314/-** and the same is recoverable from the importer under Section 28 (4) along with applicable interest under Section 28AA of the Customs Act, 1962.

17. Now I discuss the merit of the case, 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. 20,314/-** and the same is recoverable from the importer U/s 28 (4) along with applicable interest U/s 28AA of the Customs Act, 1962.

18. With regard to the proposal of imposition of penalty under section 114A/112(a), I find that the Importer has submitted a wrong declaration under Section 46(4) of the Act and accordingly I find that, the importer is liable for a penalty under Section 114A, further for the same reason, I find that, the subject goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962. In this regard, 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.), has held as under: -

"22. We must also bear in mind that for improper importation of the dutiable goods or the prohibited goods, the importer is liable to be proceeded against under Section 112 of the Act by subjecting him to a penalty. Therefore, the fine proposed to be imposed under Section 125 of the Act is directed against the goods, in addition to the one that was already provided for under Section 112 of the Act. The fine contemplated is for redeeming the goods, whereas, the importer is sought to be penalised under Section 112 for doing or omitting to do any act which rendered such goods imported by him, liable to be confiscated under Section 111 of the Act and for that act or omission, the appellant is liable to be penalised."

Following the above case law, I hold that the subject goods are liable for confiscation under Section 111(m) and/or 111(o) despite the fact that the goods are not physically available now.

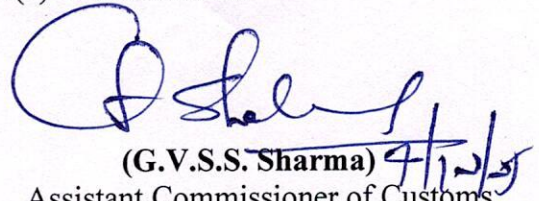
19. In view of the above, I pass the following order.

Order

- (i) I hold that the subject goods having assessable value of **Rs. 2,30,996/- (Rupees Two Lakh Thirty Thousand Nine Hundred Ninety Six Only)** are liable for confiscation under the provisions of Section 111(m) of the Customs Act 1962. I impose a

redemption fine of **Rs. 24,000/- (Rupees Twenty Four Thousand Only)** under Section 125 of the Customs Act, 1962.

- (ii) I confirm the demand of differential duty amounting to **Rs. 20,314/- (Rupees Twenty Thousand Three Hundred Fourteen Only)** under Section 28(4) of the Customs Act, 1962 on the impugned goods.
- (iii) I confirm the demand of interest under Section 28AA of the Customs Act, 1962 on differential duty mentioned in (ii) above at the applicable rates.
- (iv) I impose a penalty of **Rs. 20,314/- (Rupees Twenty Thousand Three Hundred Fourteen Only)** and applicable interest thereon, on **M/s HK ELECTRONICS** under Section 114A of the Customs Act, 1962. If such duty is paid from 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, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of the order.
- (v) As penalty has already been imposed under Section 114A of the Customs Act, 1962, I refrain from imposing penalty under Section 112(a) of the said act.


(G.V.S.S. Sharma)
Assistant Commissioner of Customs
Gr-VA, NS-V, Nhava Sheva, JNCH

To,
M/s. H,K, ELECTRONICS (IEC- 310020611)
204, 2nd Floor, Building No. 10, Hd
Chandarsar Road, Virar East Virar 401305

Copy to:-

1. The Asstt./Dy. Commissioner of Customs, D-1 Circle/Audit JNCH.
2. The Asstt./Dy. Commissioner of Customs, CAC, JNCH.
3. The Asstt./Dy. Commissioner of Customs, CRAC.
4. Office copy
5. Notice Board (for display) Notice Board (for display).

Handwritten signature

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