



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



F.No.: S/26-Misc-543/2023-24/Gr. VA JNCH
S/10-Adj-196/2025-26 Gr. VA JNCH

Date of Order: 1/08/2025
Date of issue: 1/08/2025

DIN No.: 90250878 MX 0000 555 C23

Passed by: G V S S Sharma
Assistant Commissioner of Customs,
Gr. VA, (NS-V), JNCH, NavaSheva.

Order No. 700 /2025-26/AC/Gr. VA/NS-V/CAC/JNCH

Name of Party/Noticee: M/s RAJ RAJENDRA TRADE LINKS (IEC- 313052131)

मूलआदेश

- यहप्रतिज्ञाव्यक्तिकोजारीकीजातीहै, औरउसकेउपयोगकेलिएनिःशुल्कदीजातीहै।
- इसआदेशकेविरुद्धअपीलसीमाशुल्कअधिनियम, 1962 कीधारा 128(1) केतहतइसआदेशकीसूचनाकीतिथिसेसाठदिनोंकेभीतरसीमाशुल्कआयुक्त (अपील), जवाहरलालनेहरुसीमाशुल्कभवन, शेवा, ता. उरण, जिला - रायगढ, महाराष्ट्र - 400707 कोकीजासकतीहै।अपीलदोप्रतियोंमेंहोनीचाहिएऔरसीमाशुल्क (अपील) नियमावली, 1982 केअनुसारफॉर्मसी.ए. 1 संलग्नमेंकीजानीचाहिए।अपीलपरन्यायालयशुल्ककेरूपमें 1.50 रुपयेमात्रकास्टांपलगायाजाएगा औरसाथमेंयहआदेशयाइसकीएकप्रतिभीलगाईजाएगी।यदिइसआदेशकीप्रतिसंलग्नकीजातीहैतो इसपरन्यायालयशुल्ककेरूपमें 1.50 रुपयेकास्टांपभीलगायाजाएगा, जैसाकिन्यायालयशुल्कअधिनियम, 1970 कीअनुसूची 1, मद 6 केअंतर्गतनिर्धारितकियागयाहै।
- इसनिर्णयाआदेशकेविरुद्धअपीलकरनेवालाव्यक्ति, अपीलनिर्णयितहोनेतक, शुल्कयाशास्त्रिकेसंबंधमेंविवादहोनेपरमांगेगएशुल्कका 7.5% काभुगतानकरेगा, अथवाकेवलशास्त्रिकेसंबंधमेंविवादहोनेपरशास्त्रिकाभुगतानकरेगा।

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, 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 THE CASE

A Show Cause Notice No. 1108/2023-24/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.RAJ RAJENDRA TRADE LINKS (IEC- 313052131) by the Assistant Commissioner of Customs, Gr. VA, JNCH. The SCN has been placed before me for adjudication. Brief facts of the case are as enumerated below.

Whereas, M/s RAJ RAJENDRA TRADE LINKS (IEC- 313052131)situated at Raj Rajendra Trade Links 304, Aaditya Arcade, Sanghvi Group 3rd Floor, Topiwala Lane, Nr. Dream Landcinema, Lamington Road, Grant Road, Mumbai, Maharashtra- 400007(hereinafter referred to as 'Importer') had imported 'Packing Mtrl Brown Paper Box/Paper Roll Sticker' (herein after referred to as 'subject goods'),classified under CTH 48191010vide the Bills of Entry as detailed in Annexure-Ato the said notice.

2. During the course of Post Clearance Audit of Bills of Entry it has been noticed that the Importer has imported goods viz. Packing Mtrl Brown Paper Box/Paper Roll Sticker appeared to attract 18% IGST as per Sr. No.153A of Schedule III of the IGST Notification No. 43/2027 –IT (rate) dated 14.11.2017 (as amended in the IGST Notification No. 01/2017 dated 28.06.2017). However, the importer has paid the IGST duty @ 12 % on the imported at the time of clearance, as per Sr.No.122 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017.

3. Accordingly, a Consultative Letter no.was issued to the importer advising them for payment of the Differential IGST amounting to Rs.3,738/- along with applicable interest and penalty. However, no reply has been received from the importer.

4. The description of CTH 4819 reads as under:

48.19 -“Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; Box files, letter trays, and similar articles of paper or paperboard of a kind used in offices, shops or the like”.

4819.10 - Cartons, boxes and cases, or corrugated paper or paperboard

4819.20 - Folding cartons, boxes and cases, of non-corrugated paper orPaperboard

4819.30 - Sacks and bags, having a base of a width of 40 cm or more

4819.40 - Other sacks and bags, including cones

4819.50 - Other packing containers, including record sleeves

4819.60 - Box files, letter trays, storage boxes and similar articles, of a kind used in offices shops, or thelike

5. The description provided in the Bills of Entry does not indicate clearly whether the goods are made up of corrugated paper and in order to avail the benefit of lower IGST, its onus is on the importer to prove beyond doubt that the subject goods qualify for such benefit. In absence of such information the subject goods are liable to be classified under CTH 48192090.

6. The description provided in the Bill of Entry does not indicate clearly whether the subject goods are “Cartons, boxes and cases of corrugated paper or paper board”. As seen from the customs tariff for the relevant period, only corrugated carton boxes falling under CTH 4819 were

liable to IGST @ 12% and the remaining goods falling under CTH 4819 were liable to IGST @ 18%. In order to get the benefit of lower IGST rate @12%, it is mandatory that the goods should be corrugated carton boxes. Unless the description contains the words 'corrugated' in the Bills of Entry, one cannot assume that the carton boxes falling under CTH 4819 were of corrugated cartons and lower rate of IGST @12% could be extended to it. In the absence of such description in the Bills of Entry, it appeared that the goods were non-corrugated and accordingly customs duty is required to be discharged.

7. There are various types of paper packages presently being used by the industry for packing of various goods. Some of the paper packages are as under:

a. Paperboard boxes

Paperboard is a paper-based material that is lightweight, yet strong. It can be easily cut and manipulated to create custom shapes and structures. These characteristics make it ideal to be used in personalized packaging. It is made by turning fibrous materials that come from wood or from recycled waste paper into pulp, and then bleaching it. Paperboard packaging comes in various grades, each suitable for different packaging requirements. SBS (or solid bleached sulfate) paperboard can be used for packing cosmetics, medicines, milk and juice, cosmetics, frozen food and more. Choosing kraft, or CUK (coated unbleached kraft) paperboard packaging are for those who prefer the natural and environmentally-friendly look of recycled paper, which can be used for similar packaging applications. Kraft is often seen to be less resistant to moisture, making it less suitable for food-related products, or frozen-goods packaging. With the right combination of design options, paperboard packaging can look high-end, without high-end pricing.

b. Corrugated boxes

It consists of 3 layers of paper, an outside liner, an inside liner and a corrugated medium (also known as fluting). The corrugated medium that gives it strength and rigidity. The main raw material that is used to construct the corrugated board is most recycled paper, made on large high-precision machinery known as corrugators. These types of boards can re-used and recycled again and again as a source of pulp fiber. Corrugated boards are of different types, single faced, double faced (single wall), twin wall, and triple wall. They can be used to make packaging with different characteristics, performances, and strength. The board is cut and folded into different sizes and shapes to become corrugated packaging. Other applications of corrugated board packaging include retail packaging, pizza delivery boxes, small consumer goods packages, and so forth.

c. Rigid boxes

This is the type of box used to package iPhones or those luxury retail products such as Rolex, Tiffany & Co and Marc Jacobs. This type of cardboard material is called a rigid box. A rigid box is made out of highly condensed paperboard that is 4 times thicker than the paperboard used in the construction of a standard folding carton. The easiest real-world example of rigid boxes are the boxes that hold Apple's iPhones and iPads, which are 2 Piece setup rigid boxes. Compared to paperboard and corrugated boxes, rigid boxes are definitely among the most expensive box styles. The rigid boxes usually do not require dies that are expensive or massive machinery and are often hand-made. Their non-collapsible nature also gives them a higher volume during shipping, which easily incurs higher shipping fees. These boxes are commonly used in merchandising cosmetics, jewellery, technology, and high-end luxury couture. It is easy to incorporate features such as platforms, windows, lids, hinges, compartments, domes, and embossing in a rigid box.

d. Chipboard packaging

Chipboard packaging is used in industries such as electronic, medical, food, cosmetic, and beverage. A chipboard basically is a type of paperboard that is made out of reclaimed paper stock. It can be easily cut, folded, and formed. It is a cost-effective packing option for your products. It comes in various densities and strength is determined by how high the density of the material is. If you want images to be directly printed onto the chipboard, you can treat the chipboard with bleach sulphate, and with CCNB (Clay Coated News Back) which makes the material even more durable.

8. Relevant Legal Provisions:

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

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

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

8.2 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.

8.3 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.

8.4 SECTION 46. Entry of goods on importation, subsection 46(4) reads as:

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

8.5 Section 111 (Confiscation of improperly imported goods etc.) reads as: The following goods brought from a place outside India shall be liable to confiscation (m) Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.....;

8.6 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 shall be liable,-*
- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is greater;*
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher.....”.*

8.7 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:

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

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

8.9 SECTION 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

Acts of omission and commission by the Importer

9. From the above, it is evident that there are various packages including the corrugated packages/boxes. However, it is onus on the part of the importer to declare correct description of the goods while filing the Bill of Entry in order to claim the benefit as provided by the Government. In the absence of the complete description, it appeared that the goods were non-corrugated and the complete description was not given by the importer for the purpose of getting the concessional rate of duty thereby misdeclaration of the goods. A carton is a box or container usually made of rigid packaging board, paperboard and sometimes of corrugated board. Many types of cartons are used in packaging. Sometimes a carton is also called a box. A colour box appeared to be a small carton used for packing colour pens/pencils/gifts. Generally, colour boxes are made of cardboard which is foldable. Hence, a colour box is nothing but a cardboard box. As there is possibility of carton to be corrugated and non-corrugated, unless complete description is given in the Bill of Entry, it would not be construed as corrugated carton/box. In the absence of such description, it is assumed that it is non-corrugated carton and the same attracts IGST @18%. In the instant case, the importer had not given complete description of the goods as whether the same are corrugated or not but classified the disputed goods under CTH 48191090 as if they were corrugated carton boxes and paid the IGST @12% thereby they have short paid the IGST and the same is recoverable from them under the provisions of the Customs Act, 1962.

10. The description provided in the Bills of Entry is 'Packing Mtrl Brown Paper Box/Paper Roll Sticker'. The importer has declared that all the subject goods were made of Cardboard and has classified the same goods under CTH48191090. Here it is pertinent to mention that the CTH 48191090 attracts IGST @12% if it has made of corrugated paper or paper board whereas in case it is made of non-corrugated paper or cardboard it attracts IGST @18%. In order to claim the benefit of the specified CTH, the onus is on the importer to prove that the impugned goods are as per the eligibility criteria for claiming or classifying under the relevant CTH. But, in the instant case, the importer had declared that the said cartons are made of cardboard only but classified under various CTH as shown above. By classifying the Cartons under CTH 48191090, the importer has discharged the IGST @12% instead of 18%, thereby short paid the IGST.

11. The impugned goods of the importer are cardboard and non-corrugated packaging materials. The importer had classified the same goods under different CTH and discharged IGST @12% as if the goods were corrugated boxes by giving incorrect and insufficient description with an intention to get the benefit of the IGST. As the importer had declared that these goods are made of cardboard, there is no ambiguity in arriving to a conclusion that the impugned goods are non-corrugated packages and are thus classifiable under CTH 48192020 and are liable for IGST @ 18%.

12. In view of the above it appeared that the importer has mis-declared, misclassified the goods under CTH 48191090 and cleared the subject goods by paying IGST @12% instead of paying IGST @18% on correct classification under CTH 48192020. Thus, the importer has short paid the duty amounting to Rs.3,738/- and same is recoverable from the importer u/s 28 (4) of the Customs Act 1962 along with applicable interest u/s 28AA and penalty under Section 112(a) and/or 114A of the Customs Act, 1962 read with the Section 28 of the Customs Act, 1962 by invoking extended

period of limitation and the subject goods appeared to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

13. 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 more specifically the RMS facilitated Bill of Entry, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In other words, the onus is on the importer in order to prove that they have classified the goods correctly by giving the complete description of the goods, classify the same under proper CTH and payment of duties of customs as applicable. Incomplete description of the goods declared, misclassification of goods and short payment of duty is nothing but suppression of information with intent to get financial benefit to claim the benefit of the Notification. In view of the above, it is very clear that the onus is on the importer only to give correct declaration, to make correct classification of the goods and to pay the correct duties as applicable of the goods being imported.

14. Even though they have declared that the impugned goods are made of cardboard material, they have classified under different CTH viz., 48191010. As seen from the description given in the Bills of Entry, it is beyond doubt that they have imported the cartons made of cardboard material only and not corrugated boxes. As detailed above, it is the responsibility of the importer to give correct and complete description of the goods being imported in the Bills of Entry as the insufficient description of the goods may lead to mis-declaration as explained in the above paras. In spite of knowing the fact that the impugned goods were made of cardboard material, the importer has paid the IGST at lesser rate @12% instead of 18% as if the goods were corrugated in nature thereby leading to short payment of duty by the importer as detailed in the above paras. I find that the mis-classification of the impugned goods and short payment of duties of customs was done by the importer intentionally in order to pay IGST at reduced rate thereby to get financial benefit. Thus, the importer has suppressed the facts, thereby mis-classified the impugned goods leading to short payment of IGST.

15. From the foregoing, it appeared that the Importer had wilfully mis-classified the goods; that the Importer had submitted a false declaration under section 46(4) of the said Act. Due to this act of omission of Importer, thereby causing a loss to the government exchequer equal to the differential duty.

16. Therefore, in exercise of the powers conferred by Section 28 read with Section 124 of the Customs Act, 1962, the importer M/s.RAJ RAJENDRA TRADE LINKS (IEC- 313052131) was

issued a Show Cause Notice by the Deputy/Assistant Commissioner of Customs, Group VA, Jawaharlal Nehru Custom House, Nhava Sheva, Taluka- Uran, District – Raigad, Maharashtra- 400707, asking them, as to why:

- (a) The subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962;
- (b) The differential duty amounting to Rs.3,738/- as detailed in the Annexure should not be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962.
- (c) The applicable interest on the amount specified above should not be recovered from them in terms of Section 28AA of the Customs Act, 1962.
- (d) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.
- (e) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

17. Subsequently, vide approval dated 26.07.2024 in File No. S/26-Misc-543/2023-24/Gr. VA JNCH, the Additional Commissioner of Customs, in exercise the power conferred under the first proviso to Section 28(9) of the Customs Act, 1962 has extended the period of adjudication by one year from the due date, on the reasons mentioned in the subject file which prevented the adjudicating authority to complete the adjudication within the stipulated period of 1 year.

Personal Hearing and Written Submissions

18. In order to comply with the principle of natural justice, personal hearing in the matter was offered to the importer vide letter F. No. S/26-Misc-543/2023-24/Gr. VA JNCH to appear before the adjudicating authority on 25.06.2025/01.07.2025/04.07.2025 to present their case in respect of the subject show cause notice. However, no one appeared on behalf of M/s. RAJ RAJENDRA TRADE LINKS (IEC- 313052131) 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

19. I have carefully gone through the facts of the case, available records and evidences referred to above.

20. On perusal of facts of the case, I find that the following issues are involved, which are required to be decided in the present proceedings:

- (i) The subject goods should be confiscated under Section 111(m) of the Customs Act, 1962.
- (ii) The differential duty amounting to Rs. 3,738/- should be demanded and recovered from them in terms of Section 28(4) of the Customs Act, 1962.
- (iii) The applicable interest on the amount specified above should be recovered from them in terms of Section 28AA of the Customs Act, 1962.
- (iv) Penalty should be imposed on them under Section 112(a) and / or 114A of the Customs Act, 1962.

21. I find that the importer had imported goods having description as 'Packing Mtr Brown Paper Box/Paper Roll Sticker' and declared assessable value of Rs.56,132/- classified under CTH 48191090 vide the Bill of Entry No. as mentioned in the attached Annexure A. The description of CTH 4819 reads as under:

48.19 - "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; Box files, letter trays, and similar articles of paper or paperboard of a kind used in offices, shops or the like".

4819.10 - Cartons, boxes and cases, or corrugated paper or paperboard

22. On perusal of the entry No. 122 of schedule II of IGST Notification No: 1/2017-IGST it is evident that the 12% rate under CTH 4819 is applicable only for the goods viz., Cartons, boxes and cases of corrugated paper or paper board. The description provided in the Bill of Entry does not indicate clearly whether the subject goods are 'Cartons, boxes and cases' of corrugated paper or paper board. Also as seen from the customs tariff for the relevant period, only corrugated carton boxes falling under CTH 4819 were liable to IGST @ 12% and the remaining goods falling under CTH 4819 were liable to IGST @ 18%. In order to get the benefit of lower IGST rate @12%, it is mandatory that the goods should be corrugated carton boxes. However, unless the description contains the words 'corrugated' in the Bills of Entry, one cannot assume that the carton boxes falling under CTH 4819 were of corrugated cartons and lower rate of IGST @12% could not be extended to it. In the absence of such description in the Bills of Entry, it is not acceptable that the goods were corrugated and accordingly liable for IGST @ 18%.

23. I find that the importer had classified the same goods under CTH 48191090 and discharged IGST @12% as if the goods were corrugated boxes by giving incorrect and insufficient description with an intention to get the benefit of the IGST. I also find that the imported goods attract 18% IGST as per Sr. No.153A of Schedule III of the IGST Notification No. 43/2027 -IT (rate) dated 14.11.2017 (as amended in the IGST Notification No. 01/2017 dated 28.06.2017). However, the importer has paid the IGST duty @ 12 % on the imported at the time of clearance, as per Sr.No.122 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017.I am also convinced that the importer had wilfully mis-declared the subject goods by way of incomplete description for the purpose of importing the same.

24. The total assessable value of the BE items so imported is Rs.56,132/-and there is a short payment of IGST Rs. 3,738/-which is recoverable from the importer along with applicable interest and penalty. It is on record that a consultative letter was issued to the importer to clarify the issue raised by the department, the importer was advised to pay the Differential IGST amounting to Rs. 3,738/-along with applicable interest and penalty. However, no reply or submission was given by importer in this regard.

25. 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 ₹3,738/-and the same is recoverable from the importer under Section 28 (4) along with applicable interest under Section 28AA of the Customs Act, 1962.

26. With regard to the proposal of imposition of penalty under Section 114A, I find that the Importer has submitted a wrong declaration under Section 46(4) of the Act and accordingly I find that, the subject goods are liable for confiscation under Section 111(m)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:-

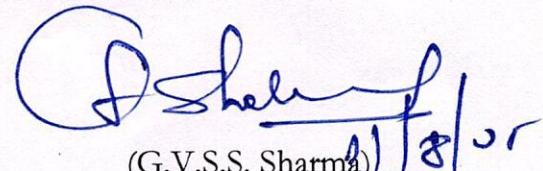
"22. We must also bear in mind that for improper importation of the dutiable goods or the prohibited goods, the importer is liable to be proceeded against under Section 112 of the Act by subjecting him to a penalty. Therefore, the fine proposed to be imposed under Section 125 of the Act is directed against 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)despite the fact that the goods are not physically available now.

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

Order

- i) I hold that the subject goods having assessable value of **Rs. 56,132/- (Rupees Fifty Six Thousand One Hundred Thirty Two Only)** are liable for confiscation under the provisions of Section 111(m) of the Customs Act 1962. I impose a redemption fine of **Rs. 6,000/- (Rupees Six Thousand Only)** under Section 125 of the Customs Act, 1962 even though goods are not physically available.
- ii) I confirm the demand of differential duty amounting to **Rs. 3,738/- (Rupees Three Thousand Seven Hundred Thirty Eight 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. 5,000/- (Rupees Five Thousand only)** on M/s RAJ RAJENDRA TRADE LINKS (IEC- 313052131) under Section 112(a) 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 112(a) of the Customs Act, 1962, I refrain from imposing penalty under Section 114A of the said act.



(G.V.S.S. Sharma)
11/8/05

Assistant Commissioner of Customs
Gr. VA, NS-V, JNCH

To,
M/s. RAJ RAJENDRA TRADE LINKS (IEC- 313052131),
Raj Rajendra Trade Links 304, Aaditya Arcade,
Sanghvi Group 3rd Floor, Topiwala Lane,
Nr. Dream Landcinema, Lamington Road,
Grant Road, Mumbai, Maharashtra- 400007

Copy to:-

1. The Asstt./Dy. Commissioner of Customs, E1 Circle/Audit JNCH.
2. The Asstt./Dy. Commissioner of Customs, CAC, JNCH.
3. The Asstt./Dy. Commissioner of Customs, CRAC, JNCH.
4. Office copy
5. Notice Board (for display).

-5A

Item Number	BE Date	CTH 8 Digit	Item Description 1	Total Assessable Value - Assessed	Differential IGST Payable	Total Duty - Assessed	IEC Code	IEC Name
7712421	20-Aug-18	48191010	PACKING MTRL BR	56,131.61	3,738.4	13,651.2	0313052131	RAJ RAJENDRA TRADE LINKS
				56131.61	3738.3962			

