

	<p>सीमा शुल्क आयुक्त का कार्यालय OFFICE OF THE COMMISSIONER OF CUSTOMS केंद्रीय अधिनिर्णय प्रकोष्ठ, एन एस-V CENTRAL ADJUDICATION CELL, NS-V जवाहरलाल नेहरू कस्टम हाउस, न्हावा-शेवा, JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA-SHEVA, ताल-ऊरण, डिस्ट-राइगड़, महाराष्ट्र-४०० ७०७. TAL. URAN, DIST. RAIGAD, MAHARASHTRA - 400 707.</p>
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DIN : 20260178NX000000A198

F.No. S/10-852/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH

SCN No.: 1623/2024-25/ADC/Gr.VA/CAC/JNCH

SCN Date: 15.01.2025

Date of Order: 13/01/2026

Date of issue: 14/01/2026

Passed By: Shri Mazid Khan

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

Order-In-Original No. : 1448/2025-26/JC/GR.VA/NS-V/CAC/JNCH

Name of Party/Noticee :- Rotex Manufacturers And Engineers Private
(IEC-389061671)

मूल आदेश

1. यह प्रति जिस व्यक्ति को जारी की जाती है, 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 संसूचना की तारीख से साठ दिनों के भीतर सीमाशुल्क आयुक्त (अपील), जवाहरलाल नेहरू सीमाशुल्क भवन, शेवा, ता. उरण, जिला - रायगढ़, महाराष्ट्र -400707 को की जा सकती है। अपील दो प्रतियों में होनी चाहिए और सीमाशुल्क (अपील) नियमावली, 1982 के अनुसार फॉर्म सी.ए. 1 संलग्नक में की जानी चाहिए। अपील पर न्यायालय फीस के रूप में 2.00 रुपये मात्र का स्टॉप लगाया जायेगा और साथ में यह आदेश या इसकी एक प्रति लगायी जायेगी। यदि इस आदेश की प्रति संलग्न की जाती है तो इस पर न्यायालय फीस के रूप में 2.00 रुपये का स्टॉप भी लगाया जायेगा जैसा कि न्यायालय फीस अधिनियम 1970 की अनुसूची 1, मद 6 के अंतर्गत निर्धारित किया गया है।
3. इस निर्णय या आदेश के विरुद्ध अपील करनेवाला व्यक्ति अपील अनिर्णीत रहने तक, शुल्क या शास्ति के संबंध में विवाद होने पर माँगे गये शुल्क के 7.5% का, अथवा केवल शास्ति के संबंध में विवाद होने पर शास्ति का भुगतान करेगा।

ORDER-IN-ORIGINAL

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, Nhava Sheva, Tal : Uran, Dist : Raigad, Maharashtra – 400707 under section 128(1) of the Customs Act, 1962 within sixty days from the date of communication of this order. The appeal should be in duplicate and should be filed in Form CA-1 Annexure on the Customs (Appeal) Rules, 1982. The Appeal should bear a Court Fee stamp of Rs.2.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a Court Fee Stamp of Rs. 2.00 only as prescribed under Schedule 1, items 6 of the Court Fee Act, 1970.
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

1. On the basis of data analysis, it was observed that **M/s. Rotex Manufacturers And Engineers Private (IEC-389061671)** having address at Add: Trimurti Nagar,, A/P - Masur, Tal- Karad, Contact No, Dist. Satara/Mah., Pin-415106 (hereinafter referred to as importer) had filed Bills of Entry as per Annexure-A for the clearance of imported goods 'Parts of Milking machines and dairy Machinery falling under CTH 8434'.

Annexure-A

BE Number	BE Date	IEC Code	IEC Name	CTH Code	Full Item Description	Assessable	BCD Amou	IGST Asses	IGST Amou	Igst to be P
6887886	2/14/2020 0:00	389061671	ROTEX MANUFACTURERS AN	84341000	PB3230500 : G FIN ROTEX RTX4000,(PARTS FOR POSITIONER /FLOWCONTROL SYSTEM)INTERNAL REVISION : AD ITEM CODE 9GPO00000485PB3230500 : G FIN ROTEX RTX4000,(PARTS FOR POSITIONER /FLOW	6471538	485365.2	7005439	840652.8	420326.4

2. During the course of Post Clearance Audit (Thematic Based Audit), as declared by the Importer in description of goods column of B/Es it appears that Importer have imported "Parts of Milking machines and dairy Machinery "of the heading 8434 through Bills of Entry as mentioned in the table below and cleared at a lower rate of IGST @ 12% under SL No. 198 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017 instead of their residual entry at SL No. 453 of Schedule III of the said notification. Date of Out of charge of oldest bill of entry i.e 6887886/14.2.2020 is 17.2.2020.
3. The SL No. 198 of the Schedule II of the Notification No. 01/2017 dated 28.06.2017 covers the goods viz., "*Milking Machines and Dairy Machinery*". It is observed that the parts of the milking machines and dairy machinery of heading 8434 are not covered by the SL No. 198 of Schedule II of the said notification. The parts of the milking machines and dairy machinery of the heading 8434, having not been covered in any other schedule of the said notification, are classifiable under residual entry at SL No. 453 of Schedule III of the said notification which covers "*Goods which are not specified in Schedule I, II, IV, V or VI*". The goods classifiable under Schedule III of the said notification attracts IGST @ 18%, hence, IGST should have been levied @ 18% on the subject goods.
4. In this regard, attention is drawn towards the Amendment Notification No. 43/2017-IGST dated 14.11.2017. Through this notification, major

amendments have been made to the original Notification No. 01/2017 dated 28.06.2017. This notification has specifically prescribed various headings where parts are to be charged with IGST along with the main heading. For example, this amendment notification included parts of machinery of heading 8432 and 8433 under SL No. 196 and 197 respectively of Schedule II of the said notification. However, this amendment notification didn't insert parts of the milking machines and dairy machinery of heading 8434 under SL No. 198 of schedule II of the said notification.

5. Based on the Alert Circular No. 05/2019 dated 24.07.2019 issued by the Commissioner of Customs (Audit), JNCH on the above subject, it is observed from the respective Bills of Entries that the importer had imported parts of milking machines and Dairy Machinery of the heading 8434 vide Bills of Entry as mentioned in the Annexure-I to this Notice by paying IGST at a lesser rate of 12% under SL No. 198 of Schedule II of the said notification. As the subject goods were not machines of heading 8434, rather the goods are parts of the milking machines and dairy machinery of heading 8434, and as the specific SLNo.198 of the Notification does not cover the parts of the said machinery of CTH 8434, the same attract higher rate of IGST @ 18% under residual entry at SL No. 453 of Schedule III of the said notification. Thus, there is short payment of IGST on clearance of parts of milking machinery and dairy machinery. Based on the Bills of entry, the differential duty of customs (IGST) short paid by the importer has been calculated at INR 4,20,326/- [Rupees Four Lakh Twenty Thousand Three Hundred Twenty Six Only].
6. In view of the above, Consultative Letter No. 3913/2021-2022 (B3) dated 4.12.2023 was issued to the importer wherein the importer was advised to pay the differential duty along with applicable interest and penalty if agree with the view of the department on the subject issue. However, the importer neither paid the differential duty nor submitted any reply in the subject matter till date.
7. In the instant case, the importer imported parts of milking machines and Dairy Machinery of the heading 8434 and paid IGST @12% in terms of SL No. 198 of Schedule II of the said notification. As the subject goods were the parts of the milking machines and dairy machinery of heading 8434, the specific SLNo.198 of the Notification does not applicable for the same in as much as the said entry covers only the complete machinery of milking machines and dairy machinery. The entry at SL No.453 of the Notification No.1/2017- IGST covers the

Goods which are not specified in Schedule I, II, IV, V or VI and attracts IGST @18%. As the impugned goods in the instant case are not complete machines but parts of the milking machines and dairy machinery and no other entry of the Notification No.1/2017-IGST or any other Notification cover the parts of the said machinery, the residual entry of the Notification vide SL No.453 under Schedule-III is applicable to the impugned goods. As per the entry at SL No. 453 under Schedule III of the said notification, the impugned goods attract IGST @ 18%. Thus, it appears that there is short payment of IGST on clearance of parts of milking machinery and dairy machinery. Based on the Bills of entry, the differential duty of customs (IGST) short paid by the importer has been calculated at INR 4,20,326/- [Rupees Four Lakh Twenty Thousand Three Hundred Twenty Six Only]. Thus, it appears that the importer has short paid the IGST@ 12% instead of 18% on the impugned goods imported the same is recoverable from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA and penalty under Section 112(a)/114A of the Customs Act, 1962 read with Section 28 of the Customs Act, 1962.

8. 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 to prove that they have classified the goods and claimed the notification correctly by giving the complete description of the goods. Knowing the facts that the goods are parts of machines instead of machine itself, the importer wrongly claimed the lower rate of IGST @ 12% under SL No. 198 of Schedule II of the Notification No. 01/2017 dated 28.06.2017 instead of its residual entry at SL No. 453 of Schedule III of the said notification as the serial number 198 of schedule II only covers the machines of heading 8434, it doesn't cover the parts of the machines of heading 8434, is nothing but suppression of information with an intent to get financial benefit from the said notification. The parts of the milking machines and dairy machinery of the heading 8434, having not been covered in any other schedule of the Notification No. 01/2017 dated 28.06.2017, are classifiable under residual entry at SL No. 453 of Schedule III of the said notification which covers "*Goods which are not specified in Schedule I, II, IV, V or VI*". The goods are thus classifiable under Schedule III of the said notification attracts IGST @ 18%. In the instant case, the importer knew that the impugned goods are not machines of heading 8434, rather the goods are parts of the milking machines and dairy machinery of heading 8434 and hence the impugned goods fall under SL No. 453 of Schedule III of the IGST Notification No. 01/2017 dated 28.06.2017. However, the importer wrongly claimed the IGST @ 12% under SL No. 198 of Schedule II of IGST Notification No. 01/2017 and thus short paid the IGST by 6%. In view of this fact, it appears that the importer deliberately mis-declared the goods with an intention to evade IGST by paying at lower rate in order to get financial benefits and thus suppressed the facts with intention to evade duties of customs. Therefore, the matter falls under the purview of Section 28(4) of the Customs Act, 1962 and appears that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. It further appears that the importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) of the Customs Act, 1962. As the short levy has occurred due to willful mis-statement, suppression of fact to evade duty, the importer is also appeared to be liable for penalty under section 114A of the Customs Act, 1962.

10. From the above, it appears that:-

- The importer failed to assess and discharge the customs duty (IGST) correctly on parts of milking machinery and dairy machinery, imported by them under Bills of entry as shown in the Annexure-I to this Notice, under correct entry of the Notification No.1/2017-IGST by suppressing the facts and thereby contravened the provisions of Section 46 the Customs Act, 1962.
- The importer failed to differentiate between the complete machinery and parts of the milking machines and dairy machinery, and thus failed to avail appropriate serial number of the Notification No.1/2017-IGST and hence failed to assess the impugned goods viz., parts of milking machines and dairy machinery correctly and properly under self-assessment system which resulted in short payment of IGST amounting to INR 4,20,326/- [Rupees Four lakh Twenty Thousand Three Hundred Twenty Six Only] and thereby contravened the provisions of Section 17(1) of the Customs Act, 1962.
- In view of the above, it appears that there is Mens rea on the part of the importer to evade customs duty by wrong availment of relevant serial number of the Notification No.1/2017-IGST and thereby payment of duty with lower rate of customs duty (IGST). This act of the importer appears to have been rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and importer appears to be liable for penal action under Section 114(A) and /or 114AA and /or 112(a) of Customs Act, 1962.

11. In view of the above, the importer, **M/s. Rotex Manufacturers And Engineers Private (IEC-389061671)** was called to show cause as to why:

- (i) The subject goods should not be confiscated under Section 111(m) of the Customs Act, 1962;
- (ii) The IGST should not be assessed @ 18% in terms of SL No. 453 of Schedule III of the IGST Notification No. 01/2017 dated 28.06.2017;
- (iii) The differential IGST amounting to **Rs. 4,20,326/- (Rupees Four Lakh Twenty Thousand Three hundred Twenty Six Only)** should not be demanded and recovered from the importer under section 28(4) of the Customs Act, 1962;
- (iv) The applicable interest on the amount specified above should not be recovered from them in terms of section 28AA of the Customs Act, 1962.
- (v) Penalty should not be imposed on him under Section 112(a)/114A/114AA of the Customs Act, 1962.

PERSONAL HEARING & WRITTEN SUBMISSION

12. In order to comply the principle of natural justice, opportunity of personal hearing in the matter was provided to the noticee vide letter F.No. S/10-852/2024-25/ADC/Gr.VA/NS-V/CAC/JNCH dated 16.09.2025, 15.10.2025 and 11.11.2025 to appear before the adjudicating authority on 09.10.2025, 30.10.2025 and 19.11.2025 for their oral/written submission against the subject show cause notice. However, no one attended the personal hearing on any of the above dates. Despite the sufficient number of opportunities for personal hearing given to the Importer, they have neither attended the personal hearing nor submitted any written reply in their defense. There is no counter reply/written submission against the Show Cause Notice received from the Importer.

DISCUSSION AND FINDINGS

13. I have gone through the facts of the case, and material on record. I find that the Show Cause Notice proposes a recovery of differential IGST amounting to ₹ **4,20,326/- (Rupees Four Lakh Twenty Thousand Three hundred and Twenty-six Only)** under Section 28(4) of Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. The Show Cause Notice also proposes imposition of penalty on the importer under Section 112(a) / 114A/ 114AA of the Customs Act, 1962 and confiscation under Section 111(m) of the Customs Act, 1962 of subject imported goods valued at ₹**6471538/- (Rupees Sixty-four Lakh Seventy-one Thousand Five Hundred and Thirty-eight only)**.

14. After going through the description of the BE items under deliberation, it has been observed that, the description of imported goods mentioned in Annexure are 'G FIN ROTEX RTX4000 (PARTS FOR POSITIONER/ FLOW CONTROL SYSTEM)' imported vide Bill of Entry no. 6887886 dt. 14.02.2020 and classified under CTI 84341000.

15. I find that ample opportunities of personal hearing have been granted to the Importer to be heard in person and to submit their reply/defense submission against the Show Cause Notice. However, neither any written submission/reply to the Show Cause Notice has been submitted by the importer nor any of their representatives turned up for the said personal hearing. Therefore, I am left with no option other than to decide the case ex-parte on the basis of records available and the existing legal position at the relevant point of time.

16. I have carefully gone through the records and facts of the case. I find that following issues emerges for decision in this case:

- a) Whether the goods declared as "G FIN ROTEX RTX4000 (PARTS FOR POSITIONER/ FLOW CONTROL SYSTEM)" are actually assessable at a lower rate of IGST @ 12% under SL No. 198 of Schedule II of the IGST Notification No. 01/2017 dated 28.06.2017 covers the goods viz., "*Milking Machines and Dairy Machinery*" instead of their residual entry at SL No. 453 of Schedule III of the said notification with applicable IGST @18%.
- b) Whether the goods are liable for confiscation under Section 111(m) and the importer is liable for penalty under Section 112(a)/ 114A/114AA of the Customs Act, 1962.
17. It is alleged in the Show Cause Notice that the importer had imported parts of milking machines and Dairy Machinery of the heading 8434 vide Bills of Entry as mentioned in the Annexure-I to this Notice by paying IGST at a lesser rate of 12% under SL No. 198 of Schedule II of the said notification. As the subject goods were not machines of heading 8434, rather the goods are parts of the milking machines and dairy machinery of heading 8434, and as the specific SLNo.198 of the Notification does not cover the parts of the said machinery of CTH 8434, the same attract higher rate of IGST @ 18% under residual entry at SL No. 453 of Schedule III of the said notification. Thus, there is short payment of IGST on clearance of parts of milking machinery and dairy machinery.
18. I find that by Amendment Notification No. 43/2017-IGST dated 14.11.2017, major amendments have been made to the original Notification No. 01/2017 dated 28.06.2017. This notification has specifically prescribed various headings where parts are to be charged with IGST along with the main heading. For example, this amendment notification included parts of machinery of heading 8432 and 8433 under SL No. 196 and 197 respectively of Schedule II of the said notification. However, this amendment notification didn't insert parts of the milking machines and dairy machinery of heading 8434 under SL No. 198 of schedule II of the said notification.
19. I find that the importer has declared the impugned goods under CTI 84341000 as **G FIN ROTEX RTX4000 (PARTS FOR POSITIONER/ FLOW CONTROL SYSTEM)**. The goods are parts of the milking machines and dairy machinery of heading 8434, and as the specific SL No.198 of the Notification does not cover the parts of the said machinery of CTH 8434, the same attract higher rate of IGST @ 18% under residual entry at SL No. 453 of Schedule III of the said notification, however, the importer has deliberately not paid the correct duty by wilful misstatement. Hence, I am of the

considered view that the demand of differential duty by the subject SCN from the importer is justified.

20. I observe that in the era of self-assessment, the onus is on the importer to make true and correct declaration in all aspects including calculation of duty and/or description of goods. The relevant sections of Customs Act are reproduced below for ease of reference:-

21. **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.

22. Further **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

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

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short- paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

23. Thus, from material facts of the case, it is evident that the said importer, purportedly claimed wrong benefit of the said notification with the intent to pay lower duty and thereby caused lose to the govt. exchequer. The said act of the importer is nothing but wilful mis-statement with clear mens rea to pay lower duty at 12% IGST, where the impugned goods falls under 18% IGST at material time. By doing so, the importer evaded a total duty of **₹ 4,20,326/- (Rupees Four Lakh Twenty Thousand Three hundred and Twenty-six Only)**. Thus, I hold that the demand of duty under Section 28(4) of the Customs Act, 1962 is sustainable and I hold the same.

24. Further, since the demand of duty is sustainable in the instant case, the interest being accessory to the principal, the same is liable to be paid in accordance with Section 28AA of the Customs Act, 1962.

25. As I have already hold that the demand of duty for extended period under Section 28(4) of Customs Act, 1962 is sustainable in the case, I observe that the importer is liable for penal action under Section 114A of the Customs Act, 1962 and I hold the same.

26. I find that, on the basis of the facts and circumstances mentioned herein above, the importer has knowingly and deliberately indulged themselves in wilful mis-statement and alleged suppression of facts with regard to notification Sr. No., with an intent to evade the applicable duty. Thus, I am of considered view that by their aforesaid acts of omission and commission, the impugned goods are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and I hold the same. However, I find the goods imported vide bills of entry as detailed above 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 regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act...", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section III of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing the payment of the redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (i)."

27. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same have

not been challenged by any of the parties in operation. Hence, I find that any goods improperly imported as provided in any sub-section of Section 111 of the Customs Act, 1962 are liable to confiscation and merely because the importer was not caught at the time of clearance of the imported goods, can't be given differential treatment. In view of the above, I find that the decision of the Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing the decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits the imposition of a Redemption Fine.

28. Now coming to the issue of penalties, I find that the impugned notice proposes a penalty under Section 112(a) and 114A of the Customs Act, 1962 on the notice firm. In this regard, I find that the importer has wrongly evaded legitimate customs duty. I find that, in the self-assessment regime, it is the bounden duty of the Importer to correctly assess the duty on the imported goods. In the instant case wrongly availed the benefits of IGST notification by the importer of such repute having access to all legal aid, tantamount to suppression of material facts and willful mis-classification. The "mens rea" can be deciphered only from "actus-reus". Thus, providing the suppression of fact and claiming undue benefit by the said Importer taking a chance to clear the goods by misclassifying it, amply points towards their "mens rea" to evade the payment of duty. Thus, I find the Importer is liable for a penalty under Section 114A of the Customs Act, 1962.

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

ORDER

- (i) I reject the benefit of lower rate of IGST @12% availed by the importer **M/s. Rotex Manufacturers And Engineers Private** and order to re-assess the Bills of Entry under Sr. No.453 of Schedule III (IGST @18%) of Notification No. 01/2017 dated 28.06.2017, for goods imported vide subject Bill of Entry nos. 6887886 dt. 14.02.2020.
- (ii) I order to confirm the demand of differential IGST of ₹ **4,20,326/- (Rupees Four Lakh Twenty Thousand Three hundred and Twenty-six Only)** on the goods imported vide above Bills of Entry, under Section 28(4) of Customs Act, 1962.
- (iii) I order to recover applicable interest on the short-levied IGST as confirmed above from **M/s. Rotex Manufacturers And Engineers Private (IEC-389061671)** under Section 28AA of the Customs Act, 1962.

(iv) I order to confiscate the impugned goods having assessable value of **₹6471538/- (Rupees Sixty-four Lakh Seventy-one Thousand Five Hundred and Thirty-eight only)** under Section 111(m) of the Customs Act, 1962, but since the same are not available as they have already been cleared, hence I impose a redemption fine of **₹6,40,000/- (Rupees Six Lakh Forty Thousand only)** under Section 125 of the Customs Act, 1962 upon **M/s. Rotex Manufacturers And Engineers Private.**

(v) I order to impose penalty of **₹ 4,20,326/- (Rupees Four Lakh Twenty Thousand Three hundred and Twenty-six Only) (equivalent to differential IGST) plus interest leviable thereon,** on **M/s. Rotex Manufacturers And Engineers Private** under Section 114A of Customs Act, 1962. If such duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be 25% of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

(vi) I refrain from imposing any penalty under Section 112(a) of Customs Act.

30. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.



(माजिद खान / MAZID KHAN)

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

To:

M/s. Rotex Manufacturers And Engineers Private
Trimurti Nagar, A/P - Masur, Tal- Karad,
Dist. Satara/ Maharashtra - 415106

Copy to:-

1. The Dy./Asstt Commissioner of Customs, Review Cell, JNCH.

2. The Dy./Asstt Commissioner of Customs, Recovery Cell, JNCH.
3. The Dy./Asstt. Commissioner of Customs, Group VA, JNCH.
4. The Dy. /Asstt. Commissioner of Customs, Circle- C3, AUDIT, JNCH.
5. The Dy./Astt. Commissioner of Customs, EDI, JNCH..for uploading on website.
6. Notice Board through Superintendent (CHS Section), JNCH.
7. Office Copy.

