



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-505/2025-26/Gr. VA JNCH

Date: 16/12/2025

F. No. S/2-Audit-Gen-272/2021-22/JNCH/B-2/D1

Show Cause Notice No. 1703/2025-26/AC/Gr. VA/CAC/JNCH

S/10-1505/2025-26/Adj/AC/Gr.VA/NS-V/CAC/JNCH

DIN No. 2025 12 78 NX 0000 00C 637

SHOW CAUSE NOTICE ISSUED UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962

On the basis of the Analytics Report 08/2020-21 dated 22/03/2021 issued by the NCTC, Mumbai, on the issue of "Wrong claim of concessional rate of BCD as provided under S.Nos.377A and 377AA of Notification No.50/2017-Customs dated 30.06.2017 for the goods originating in the USA" the data pertaining to imports made under various CTH made by the importer M/s GE Diesel Locomotive Private Limited, through JNCH (INNSA1) was analysed in detail. It is observed that M/s GE Diesel Locomotive Private Limited (IEC-516912534) having address as Diesel Locomotive Factory, Village Bajid Boraha & Talpuraina Tehsil-Marhowra, Bihar 841418 have imported goods originating in the USA by paying concessional rate of BCD @10% or BCD @15% by claiming serial no. 377A and 377A of notification no. 50/2017-Customs dated 30.06.2017 instead of standard rates (15% or 25%) of the Customs Tariff as applicable for the goods of USA origin.

2. As per this proviso, the concessional or effective BCD rates as provided against serialnumbers21C,21D,24A,24B,26A,32A,177,177B,249A,250A,371A,371B,376A, and 377A is not applicable to the goods originating in the USA. Consequently, applicable rate would be as per standard rates of the Customs Tariff. The applicable rate of duty for the goods of USA origin on meritis15% and25% as per standard rate of Customs Tariff against the entries under Sr.No. 377A and Sr.No.377AA .

For a quick reference, the entries of 377 A and 377AA are reproduced as under:

(1)	(2)	(3)	(4)
377A.	73072900 73079990	All goods other than SIM socket/other items	10%

	73089090 73102900 73209090 73259999 73261990 73269099	(Metals) (7326 90 99) for cellular mobile phones.	
377AA.	73181500 73181600 73182990	All goods	15%

3. Form the above it is evident that the goods of USA origin are not eligible for the concessional BCD under Sr.No.377A and Sr.No.377AA of Notification50/2017- Customs dated 30.06.2017 and the subject goods are liable to be assessed at higher rate of BCD i.e. 15% or 25%.

4. The total assessable value of the BE items so imported is ₹1,89,005/-and it appears that a short levy of duty amounting to ₹24,533/- (as detailed in Annexure-'A') is recoverable from the Importer along with applicable interest and penalty.

Annexure-'A'

BE NO/Date	INV	Item	Assessed Value	Total Duty Assessed(BCD @15%+IGST@18%+SWS)	Total Duty Payable(BCD @25%+IGST@18%+SWS)	Total Differential Duty
2838773 /19-02-21	7	1	52550	19690	26511	6821
2838773 /19-02-21	9	1	136455	51130	68842	17112
			1,89,005		Total=95,353	24533

5. In view of the above, Consultative letter bearing No. 3410 dated 02.03.2022 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. 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:

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.'

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.

(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. '

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 there under, 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.]

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. '

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; '

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.'

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.'

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.]

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].

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 facts, it appears 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 ₹24,533/- (as detailed in Annexure- 'A'). Therefore, the differential duty, so not paid, is 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. 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.

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

11. 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) and 114A of the Customs Act, 1962.

12. Now, therefore, in exercise of the powers conferred by Section 28(4) of the Customs Act, 1962, **M/s GE Diesel Locomotive Private Limited (IEC- 516912534)** having address as Diesel Locomotive Factory, Village Bajid Bhoraha & Talpuraina Tehsil-Marhowra, Bihar 841418 is hereby called upon to show cause to the **Assistant Commissioner of Customs, Gr. VA, JNCH, Nhava-Sheva, Tal-Uran Distt. Raigad, Maharashtra- 400707** within 30 days of the receipt of this notice as to why:

- (i) The concessional rate of BCD @10% or BCD @15% by claiming serial no.377A and 377AA of notification no. 50/2017-Customs dated 30.06.2017-for the goods originating in USA, should not be rejected.
- (ii) Differential/short paid Duty amounting to ₹24,533/-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.
- (iii) 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.

- (iv) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' having assessable value of ₹1,89,005/- should not be held liable or confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (v) 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.
- (vi) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

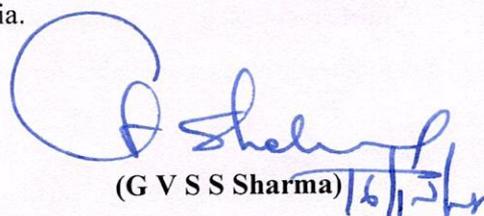
13. It is also advised that the importer may avail the benefit of reduced penalty @15% of duty and interest so specified in this notice in terms of Section 28(5) of the Customs Act, 1962 by payment of duty and interest within 30 days of receipt of this notice, failing which importer may be subject to higher penalty equal to the duty and interest so determined.

14. The written explanation/reply should be filed by the noticee to the **Assistant Commissioner of Customs**, Gr. VA, JNCH, Nhava-Sheva, Tal.- Uran, Distt. Raigad, Maharashtra-400707 within 30 days from the date of this notice. They are further required to intimate in their written reply whether they wish to be heard in person before the case is adjudicated.

15. If no cause is shown against the action proposed to be taken or the importer and CHA does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on merits.

16. The department reserves its right to amend, modify or supplement this notice at any point of time prior to the adjudication of the case.

17. This present show cause notice is issued without prejudice to any other action that may be taken against the notice or any other firm(s) or person(s) under the provisions of the Customs Act, 1962 or any other law for the time being in force in the Union of India.


(G V S S Sharma) 16/1/24

Assistant Commissioner of Customs

GR.VA, NS-V, NHAVA SHEVA, JNCH

M/s GE Diesel Locomotive Pvt. Ltd. Diesel
Locomotive Factory, Village Bajid Boraha &
Talpuraina Tehsil-Marhowra, Bihar 841418

Copy to:

1. The Asst./Dy. Commissioner of Customs, CAC, JNCH (information)
2. The Dy. Commissioner of Customs, Circle- C1, Audit, JNCH
3. Notice Board (CHS Section).
4. Office.