

	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात-370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,</b> <b>CUSTOMS HOUSE, MUNDRA PORT, KUTCH, GUJARAT-370421</b> Email ID: group2-mundra@gov.in</p>		
<b>A.</b>	File NO.	:	<b>F.NO.GEN/ADJ/ADC/867/2025-Adjn-O/o Pr Commr-Cus-Mundra</b>
<b>B.</b>	Order-in-Original No.	:	<b>MCH/ADC/ZDC/469/2025-26</b>
<b>C.</b>	Passed by	:	<b>Dipak Zala,</b> <b>Additional Commissioner of Customs,</b> <b>Customs House, AP &amp; SEZ, Mundra</b>
<b>D.</b>	Date of order and Date of issue	:	<b>30.12.2025</b> <b>30.12.2025</b>
<b>E.</b>	SCN F. No. & Date	:	<b>F. NO. CUS/APR/MISC/12068/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 04.01.2025</b>
<b>F.</b>	Noticee(s)/Party/Importer	:	<b>M/s. SYNERGY INDUSTRIES (IEC-0512054843), situated at D-223, SECTOR-03, DSIIDC, BAWANA, NEW DELHI-110039</b>
<b>G.</b>	DIN	:	<b>20251271MO0000621246</b>

- यह अपील आदेश संबंधित को निःशुल्कप्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्रसीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-  
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

सीमाशुल्क आयुक्त (अपील),

चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,

नवरंगपुरा, अहमदाबाद-380 009

**THE COMMISSIONER OF CUSTOMS (APPEALS), Ahmedabad**

**4<sup>th</sup> Floor, HUDCO Building, Ishwar Bhuvan Road,**

**Navrangpura, Ahmedabad-380 009**

3. उक्त अपील यह आदेश भेजने की दिनांक से 3 माह के भीतर दाखिल की जानी चाहिए।  
Appeal shall be filed within three months from the date of communication of this order.
  4. उक्त अपील के उपर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-  
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
    - (i) उक्त अपील की एक प्रति और  
A copy of the appeal, and
    - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम -1870 केमदसं० -6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।  
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
  5. अपीलज्ञापनकेसाथड्यूटी/ ब्याज/ दण्ड/ जुर्मानाआदिकेभुगतानकाप्रमाणसंलग्नकियाजानाचाहिये।  
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
  6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
  7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Commissioner (A) on 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.
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### **BRIEF FACTS OF THE CASE**

**M/s. SYNERGY INDUSTRIES (IEC-0512054843)**, situated at D-223, SECTOR-03, DSIDC, BAWANA, NEW DELHI-110039 (hereinafter also referred to as “the importer/the Noticee” for the sake of brevity”) presented following Bill of Entry having details mentioned as under, through their appointed Customs Broker M/s. O. K. CARGO CRAFT PVT LTD at Custom House, Mundra, for clearance of following imported goods classifying the same under Tariff item 39049010 of first schedule of the Customs Tariff Act, 1975.

<b>Sl. No.</b>	<b>BE NO</b>	<b>Date</b>	<b>Item Description</b>	<b>Quantity in Kgs</b>	<b>Assess Value (in INR)</b>	<b>Duty</b>
1	8166456	06.04-2022	(I) CPVC RESIN J-700	<b>32275</b>	<b>5966383</b>	<b>1654776</b>
			(II) CPVC RESIN Z-500	<b>3725</b>		

**2.** During the course of Audit conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad for the period from April-22 to June-22, the Senior Audit Officer/CRA vide Para 10 of LAR No. 11/2023-24 observed that M/s. SYNERGY INDUSTRIES imported "**CPVC RESIN**" under Chapter heading/sub-heading 39049010 for which Bill of entry 8166456 dated 06.04-2022 filed by them. The said importer paid BCD at the rate of 7.5% claiming benefit of serial number 267 of Notification 50/2017 dated 30.06.2017. The above sr. no. 267 of Notification 50/2017 is applicable on “for all goods other than polymers of vinyl chloride” falling under CTH 3904. However, CPVC RESIN is Polymers of vinyl chloride and it is classified under CTH 39049010 and Basic Custom Duty @10% is to be leviable.

**3.** CBIC amended Serial Number 267 of Notification 50/2017 through Notification No. 26/2022, dated 21.05.2022, making Basic Custom Duty leviable at 7.5% for all goods under CTH 3904. Prior to this amendment, the applicable rate was 10%. Since the goods covered under the said Bill of Entry were imported before the amendment, the applicable Basic Custom Duty rate for the said Bill of Entry is 10%.

**3.1.** Pursuant to Serial Number 267 of Notification 50/2017, only goods other than polymers of vinyl chloride are eligible for the concessionary rate. Since CPVC RESIN does not meet this criterion, the incorrect availing of this exemption resulted in a short levy of duty, amounting to Rs.1,93,610/-. Accurate classification of imported goods is crucial to avoid such discrepancies and ensure compliance with customs regulations.

**4.** The importer erroneously claimed a benefit under Serial Number 267 of Exemption Notification 50/2017, dated 30.06.2017, which exclusively applies to goods "other than polymers of vinyl chloride". However, they imported "CPVC RESIN" under Chapter heading/sub-heading 39049010, attracting a total duty of 30.98% comprising 10% Basic Customs Duty (BCD), 10% Social Welfare Surcharge (SWS), and 18% Integrated Goods and Services Tax (IGST). Consequently, the importer is liable to pay a differential customs duty of Rs.1,93,610/- calculated as the difference between the total duty payable at 30.98% and the duty actually paid, thereby rectifying the shortfall in duty payment.

Sl. No.	BE NO	Date	Assess Value (in INR)	Duty Paid @27.735% BCD	Duty payable @30.98% BCD (in INR)	Differential Duty
1	8166456	06.04.2022	5966383	16,54,776/-	18,48,386	1,93,610

**5. *Relevant Legal provisions, in so far as they relate to the facts of the case:-***

*A. Customs Notification No. 50/2017-Cus dated- 30.06.2017;*

*B. The Customs Tariff.*

*C. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-*

*“(i) 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”.*

*D Section 28 (4) of the Customs Act, 1962 provides that “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”.*

*E Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-*

*(1) Where any duty has not been levied or paid or has been short levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:*

*F Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-*

*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 willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

*Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

*Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

**6.** The importer/noticee willfully misstated facts and incorrectly claimed the benefit of Serial Number 267 of Notification 50/2017, dated 30.06.2017. This notification applies exclusively to "goods other than polymers of vinyl chloride." However, they imported "CPVC RESIN" under Chapter Heading/Sub-heading 39049010, which attracts a total duty of 30.98% (10% BCD + 10% SWS + 18% IGST). Consequently, the importer/noticee paid a lower duty of 27.735%, resulting in a shortfall.

**7.** In the light of the documentary evidences, as brought out above and the legal position, it appears that a well thought out conspiracy was hatched by the importer/ noticee to evade customs duty by wrongly claiming the benefit of Serial Number 267 of Notification No. 50/2017 dated 30.06.2017 for the imported goods."

**8.** Whereas, "It is evident that the importer/noticee was aware of the correct nature of the goods but still claimed undue notification benefits to clear the goods under CTH 39049010. They wrongly claimed the benefit of Serial Number 267 of Notification No. 50/2017 dated 30.06.2017, paying a lower rate of duty instead of the correct rate of 10% BCD, 10% SWS, and 18% IGST. Under Section 17 of the

Customs Act, 1962, importers are entrusted with the responsibility of correctly self-assessing duties. However, in this case, the importer intentionally failed to pay the correct customs duties on the imported goods. This constitutes a willful violation of Section 17(1) of the Act, as the importer failed to correctly self-assess the impugned goods. Furthermore, they also willfully violated Sub-sections (4) and (4A) of Section 46 of the Act. Given the assessable value of **Rs.59,66,383/-**, the goods appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. Therefore, "It appears that the importer deliberately claimed the benefit of Serial Number 267 of Notification No. 50/2017 dated 30.06.2017 to evade duty, paying a lower rate instead of the correct 30.98% under CTH 39049010 for the impugned goods. This resulted in a short levy of duty of **Rs.1,93,610/-** for the subject Bill of Entry, which is recoverable from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. The importer's deliberate misdeclaration of goods and wrongful claim of benefit under Serial Number 267 of Notification No. 50/2017 dated 30.06.2017 for duty evasion also renders them liable to penalty under Section 114A of the Customs Act, 1962.

10. Therefore, a Show Cause Notice bearing F. No. CUS/APR/MISC/12068/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 04.01.2025 was issued to M/s. SYNERGY INDUSTRIES (IEC-0512054843), situated at D-223, SECTOR-03, DSIIDC, BAWANA, NEW DELHI-110039, calling upon to show cause to the Deputy Commissioner of Customs, Import Assessment, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:-

- i. The benefit claimed under sr. no. 267 of Notification No. 50/2017 for goods imported vide Bills of Entry as detailed in above table under CTH 39049010, should not be rejected and re-assess the same without benefit of Notification.
- ii. The goods having assessable value of **Rs.59,66,383/-** covered under Bill of Entry as detailed in above table, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- iii. The differential duty worked out as short levy amounting to **Rs.1,93,610/** (Rupees One Lakh Ninety Three Thousand Six Hundred Ten Only) for subject Bills of Entry as detailed in above table, should not be recovered from importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.

- iv. Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

**10.1.** I further take note of the corrigendum dated 18.02.2025 issued from F. No. CUS/APR/MISC/12068/2023-Gr 2-O/o Pr Commr-Cus-Mundra by the Deputy Commissioner (Import Assessment), Customs House, Mundra, vide which the adjudication authority has been changed from the Deputy Commissioner to the Additional Commissioner, Custom House Mundra.

### **DEFENCE SUBMISSION AND PERSONAL HEARING**

**11.** Following the principles of natural justice, the importer was granted sufficient opportunities of personal hearing on 04.08.2025, 02.09.2025 and 19.12.2025. However, the importer neither appeared for personal hearing nor filed any written submissions. In view of above, it is obvious that the importer is not bothered about the ongoing adjudication proceedings and does not have anything to say in his defence. As such the impugned SCN remains uncontested.

### **DISCUSSIONS AND FINDINGS**

**12.1.** Having gone through the records of the case, I find that in the instant case, adequate opportunities have been provided to the importer to respond to the impugned demand notice. However, the importer has failed to file any defence, despite a considerable amount of time have been passed. I find that neither the importer nor their any authorized representative appeared for the personal hearing on any of the three dates given to present their case, nor have they submitted any reply to the allegations mentioned in the impugned Show Cause Notice (SCN). Thus, I find that sufficient time and opportunity have been given to the importer, and therefore, the principles of natural justice have been complied with. I am of the considered opinion that sufficient opportunities have been offered to the importer in keeping with the principle of natural justice and there is no prudence in keeping the matter in abeyance indefinitely. Hence, I proceed with the ex-parte finalization of the adjudication proceedings, based on the facts and evidence available on record.

**12.2.** Before, proceeding further, I would like to mention that Hon'ble Supreme



Court, High Courts and Tribunals in several judgments/decisions have held that ex-parte decision will not amount to violation of principles of Natural Justice. In support of the same, I place reliance upon the following judgments/orders as under: -

- (a) The Hon'ble Supreme Court in the matter of **JETHMAL Versus UNION OF INDIA** reported in 1999 (110) E.L.T. 379 (S.C.), the Hon'ble Court has observed as under;

*"7. Our attention was also drawn to a recent decision of this Court in A.K. Kripak v. Union of India - 1969 (2) SCC 340, where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well-known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an ideal formality."*

- (b) Further, on the issue of affording sufficient opportunities to the Noticee to defend himself vis-a-vis allegation made, I find it relevant to refer to the judgement of Hon'ble Allahabad High court in the case of **Modipon Ltd. Vs CCE, Meerut**, reported as 2002 (144) ELT 267 (AIL). The Hon'ble High Court, at Para 19, held as follows:-

*"No doubt, hearing includes both written submissions and personal hearings; however, the principle of audi alteram partem does not make it imperative for the authorities to compel the physical presence of the party concerned for a hearing and continue adjourning the proceedings as long as the party concerned does not appear. What is imperative for the authorities is to afford the opportunity for a hearing. It is for the party concerned to avail of this opportunity. If the opportunity is provided, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the proper flow of justice, not instruments for delaying proceedings and obstructing justice. In the instant case, as stated in detail in the preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearings, the petitioners filed written submissions, and the administrative officer of the*

*factory appeared for personal hearings and filed written submissions. Therefore, in the opinion of this Court, there has been sufficient compliance with the principles of natural justice, as adequate opportunity for hearing was afforded to the petitioners.”*

- (c) The Hon’ble Tribunal, Chennai, in the case of **V.K. Thampi Vs. Collector of Customs and Central Excise, Cochin [1988 (033) ELT 424]**, held at para 7 that;

*“an adjudicating authority is entitled to proceed ex-parte if the person concerned does not appear before it in response to a notice issued by it.”*

- (d) The Hon’ble CESTAT, Mumbai in the case of **GOPINATH CHEM TECH. LTD Vs. COMMISSIONER OF CENTRAL EXCISE, AHMEDABAD-II** reported in 2004 (171) E.L.T. 412 (Tri. - Mumbai), the Hon’ble CESTAT has observed that;

*Natural justice - Personal hearing fixed by lower authorities but not attended by appellant and reasons for not attending also not explained - Appellant cannot now demand another hearing - Principles of natural justice not violated. [para 5]*

**Accordingly, the instant case is being adjudicated ex-parte on the basis of available records.**

**13.** Having gone through the impugned SCN, I find that following issues are involved in this case, which are required to be decided at the stage of adjudication:

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- i. Whether the importer’s claim for the exemption under Sr. No. 267 of Notification No. 50/2017-Cus dated 30.06.2017 liable to be rejected?
- ii. Whether the differential duty amounting to **Rs.1,93,610/-**, as worked in the Show Cause Notice, is required to be recovered from the importer under Section 28 (4) along with applicable interest under Section 28AA and Penalty under Section 114A of the Customs Act, 1962?
- iii. Whether the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962?

**14.** Before addressing the above issues, I firstly examine the Bill of Entry No.

8166456 dated 06.04.2022 to verify the description of the goods. I note as per impugned bill of entry, the importer, imported the goods with description, "CPVC Resin (J-700 & Z-500)" classifying under CTH 39049010 in Schedule-I of the Customs Tariff Act, 1975. I also peruse supporting import documents uploaded by the importer through e-Sanchit, which indisputably confirm that the imported goods were indeed CPVC Resin. Thus, I find that the description in the bill of entry and the documentary evidence are fully consistent and leave no ambiguity regarding the nature of the imported goods.

**15.** After examining description of the impugned goods, the facts on record along with legal provisions applicable to the present case, I, now, proceed to address each issue one by one.

**ELEGIBILITY OF THE EXEMPTION UNDER SR. NO. 267 OF THE NOTIFICATION NO. 50/2017-Cus DATED 30.06.2017:**

**16.1.** Having gone through the impugned SCN, I find that the SCN states that prior to amendment of Sr. No. 267 of the Exemption Notification 50/2017-Cus dated 30.06.2017 by Notification No. 26/2022-Cus dated 21.05.2022 (effective from 22.05.2022), under the said serial number, a concessional rate of Basic Customs Duty (BCD) @ 7.5% was available to goods classifiable under customs tariff heading (CTH) 3904 and falling under the description **"all goods other than polymers of vinyl chloride"**. I find that the SCN proposes that the impugned goods did not meet the conditions of the said Sr. No. 267, and, that the importer wrongly claimed the exemption. Therefore, the SCN proposes denial of the exemption and demands BCD at the standard tariff rate of 10%.

**16.2.** To proceed further, I find it necessary to examine the customs tariff, relevant entries of Exemption Notification No. 50/2017-Cus dated 30.06.2017, as amended, along with the statutory framework laid down under the Customs Act, 1962 regarding the date for determination of rate of duty.

**16.3.** I have gone through the customs tariff heading 3904 of Chapter 39 of Schedule-I to the Customs Tariff Act, 1975. I find that the said heading is dedicated to polymers of vinyl chloride and of other halogenated olefins, in primary forms. I note that Chlorinated Polyvinyl Chloride (CPVC) Resin is specifically classified

under tariff item 39049010. I observe that, during the relevant period, the standard rate of Basic Customs Duty (BCD) for this item was 10%. The relevant extract of the said heading is reproduced below for ease of reference:

Heading/ <u>duty</u> Sub-heading/ Tariff-item	Description of goods	Unit	Rate of	
			Standard	Prefer- ential
(1) (5)	(2)		(3)	(4)
<b>3904</b>	<b>POLYMERS OF VINYL CHLORIDE OR OF OTHER HALOGENATED OLEFINS, IN PRIMARY FORMS</b>			
3904 10	- Poly (vinyl chloride), not mixed with any Other substances:			
3904 21	-- Non-plasticised			
3904 22	-- Plasticised			
3904 30	-- Vinyl chloride-vinyl acetate copolymers			
3904 40	-- Other vinyl chloride copolymers			
3904 50	-- Vinylidene chloride polymers			
	- Fluoro-polymers:			
3904 60	-- Polytetrafluoroethylene			
3904 69	-- Other			
390490	-- Other			
<b>39049010</b>	<b>--- Chlorinated polyvinyl chloride (CPVC) Resin</b>	<b>Kg</b>	<b>10%</b>	<b>-</b>
39049090	--- Other	Kg	10%	-

**16.4.** I have gone through the following relevant entries of the Exemption Notification No. 50/2017-Cus dated 30.06.2017 as amended from time to time that are applicable to the present case:

**Notification No. 50/2017-Cus. Dated 30.06.2017**  
**(After amendment vide Notification No. 25/2019-Cus dated 06.07.2019)**

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	IGST	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
267	3904	All goods other than polymers of vinyl	7.5%	-	-

		chloride			
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**Notification No. 50/2017-Cus. Dated 30.06.2017 (w.e.f. 22.05.2022)**

**(After amendment vide Notification No. 26/2022-Cus dated 21.05.2022)**

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	IGST	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
267	3904	All goods	7.5%	-	-

**16.5.** Upon examining the aforesaid entries of the Notification, I find that during the period from 06.07.2019 to 21.05.2022, a concessional rate of BCD @ 7.5% under Serial No. 267 of the said Notification was specifically extended only to goods falling under the description, **“All goods other than polymers of vinyl chloride (3904)”**. However, I find that with effect from 22.05.2022, the benefit under the said serial number was extended to all goods of CTH 3904.

**16.6.** I have referred the **Section 15 of the Customs Act, 1962** and find that this section provides that the rate of duty applicable to imported goods is the rate in force on the date of filing of the bill of entry for home consumption, and in the case of warehoused goods, the rate in force on the date of clearance from the warehouse. The proviso to Section 15(1) further clarifies that where a bill of entry is presented prior to the arrival of the vessel, aircraft, or vehicle, the applicable rate of duty shall be the rate in force on the date of entry inward of such conveyance.

**16.7.** For the purpose of scrutinizing the proposal of the SCN, I have examined the duty components recorded in the impugned Bill of Entry and find that the importer has indeed availed concessional rate of BCD @ 7.5% under Sr. No. 267 of Notification No. 50/2017-Cus dated 30.06.2017. I further note that the impugned bill of entry was presented for home consumption and it reflects the details of the Import General Manifest (IGM) and Entry Inwards, as detailed below:

BE No.	BE Date	BE Type	IGM No.	IGM Date	Inward Date
8166456	06-04-2022	Home Consumption	2308268	06-04-2022	08-04-2022

**16.8.** In the light of above facts, I find that the impugned bill of entry was filed on

06.04.2022 for home consumption, while Entry Inward for the vessel, associated with the bill of entry was recorded on 08.04.2022. Therefore, in terms of proviso to Section 15(1) of the Customs Act, 1962, the applicable rate of duty is required to be determined with reference to the date of Entry Inward. I find that during the period in question, concessional rate of BCD under Sr. No. 267 of Notification No. 50/2017-Cus dated 30.06.2017, as amended by Notification No. 25/2019-Cus dated 06.07.2019, was restricted to goods falling under the description, "All goods of CTH 3904 other than polymers of vinyl chloride." It is admitted position that the impugned goods i.e. CPVC (Chlorinated Polyvinyl Chloride) Resin are classifiable under CTH 3904, but the same are a polymer of vinyl chloride. Accordingly, notwithstanding their classification under CTH 3904, the impugned goods squarely fall within the excluded category of "polymers of vinyl chloride". Therefore, I find that the impugned goods are clearly outside the scope and ambit of exemption prescribed under Serial No. 267 of Notification No. 50/2017-Cus dated 30.06.2017, as amended by Notification No. 25/2019-Cus dated 06.07.2019. **Hence, I conclude that the benefit of concessional rate of BCD of 7.5% is not admissible to the importer in the present case, and the goods are liable to levy BCD at standard tariff rate of 10%.**

#### **DETERMINATION OF DUTY, INVOCATION OF SECTION 28(4) AND LIABILITY OF INTEREST:**

**17.1.** I find that the impugned SCN proposes demand of differential duty amounting to **Rs.1,93,610/-** on an assessable value of **Rs.59,66,383/-**. It is evident from the above discussion and findings, that the importer has wrongly claimed benefit under Sr. No. 267 of the Notification No. 50/2017-Cus dated 30.06.2017. I find that by doing so they discharged BCD at the lower rate of 7.5% instead of the correct rate of 10%, which has resulted into short levy and short payment of duty. I have verified the computation of differential duty, as detailed in Para 4 of the impugned SCN and found it correct. **Thus, I determine that the importer has short levied and short paid of duty amounting to Rs.1,93,610/- on an assessable value of Rs.59,66,383/-.**

**17.2.** I find that the impugned SCN has been issued under Section 28(4) of the Customs Act, 1962, alleging that the importer, wilfully availed ineligible benefit of

concessional rate of Basic Customs Duty. I note that Section 28(4) empowers the proper officer to issue a notice within five years from the relevant date for recovery of duty that has not been levied or not paid, or short-levied or short-paid due to collusion, wilful mis-statement, or suppression of facts by the importer, exporter, or their agent.

**17.3.** I observe that Section 17 of the Customs Act, 1962, governs self-assessment and casts a statutory obligation on the importer to correctly assess and discharge customs duty. This responsibility is not contingent upon departmental intervention. In addition, Section 46(4) of the Act specifically mandates that an importer, while presenting a Bill of Entry, shall make and subscribe to a declaration as to the truth of the contents. Therefore, any misrepresentation or suppression in the declaration, especially with regard to any exemption or concession, directly attracts penal consequences under the Act. I find that in the present case, the importer, by claiming ineligible exemption from BCD, failed in their legal responsibility.

**17.4.** I find that the impugned bill of entry and its supporting import documents clearly reflect that the imported goods are “CPVC Resin”, a polymer of vinyl chloride, which is excluded from Sr. No. 267 of the Notification 50/2017-Cus dated 30.06.2017 for concessional rate of Basic Customs Duty. Despite the clear and unambiguous nature of the product description and its tariff implications, the importer knowingly and deliberately proceeded to claim the benefit of a lower rate of duty to which they were not entitled. Thus, the wrongful declaration of an inapplicable serial number under the exemption notification by the importer is a calculated and conscious act of misrepresentation. Further, I find that the importer, at no point in time, disclosed full, true and correct information about the appropriate rate of duty nor did they bring this material fact to the notice of the Department. The incorrect availment of the exemption came to light only after objection raised by the Department. Thus, it is clear that these vital and material information have been concealed from the department deliberately, consciously and purposefully to evade payment of proper customs duty. Therefore, the claim of the wrong serial number cannot be brushed aside as an innocent mistake. Thus, the conduct of the importer clearly amounts to wilful misstatement and suppression of facts, squarely attracting the invocation of Section 28(4) of the Customs Act, 1962.

**17.5.** In view of the foregoing, I agree with the SCN and **hold that the demand for differential duty of Rs.193610/- from the importer is justified and fully sustainable under Section 28(4) of the Customs Act, 1962.** Further, the statutory liability of interest is automatic and compensatory in nature, and no separate *mens rea* is required for such demand. Therefore, **in terms of Section 28AA, the importer is further liable to pay interest on the said amount from the date it became due till the date of actual payment.**

#### **IMPOSITION OF PENALTY UNDER SECTION 114A OF THE CUSTOMS ACT:**

**18.1.** I find that the SCN proposes penalty on the importer under Section 114A of the Customs Act, 1962. The relevant portion of Section 114A of the Customs Act, is re-produced herein below:

**SECTION 114A.** *Penalty for short-levy or non-levy of duty in certain cases. –Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:*

*Provided that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

*Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

.....

**18.2.** From the above, I find that a penalty under Section 114A of the Customs Act, 1962, may be imposed in cases where duty has either not been levied or has



been short-levied due to collusion, willful misstatement, or suppression of material facts. Upon careful consideration of the evidences and the foregoing discussions, I find that, in the present case, the importer claimed an ineligible exemption by wilful misstatement and suppression of the facts. In light of these acts and omissions, **I hold that the importer is liable for penalty under Section 114A of the Customs Act, 1962.**

#### **CONFISCATION OF THE GOODS:**

**19.1.** I find that the Show Cause Notice proposes confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. I find that the said section provides that, *“any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, or in respect of which any material particular has been mis-declared in the Bill of Entry or other document, shall be liable to confiscation”*. Thus, any incorrect or false declaration of material particulars such as description, classification, value etc., attracts confiscation of the goods imported under such declaration.

**19.2.** I find from the case records that the importer while filing the impugned bill of entry availed the Sr. No. 267 of the exemption notification. However, the goods were correctly leviable to BCD without exemption. I find that this ineligible exemption is not a bona fide mistake but an intentional mis-declaration of a material particular within the meaning of Section 111(m) of the Customs Act, 1962 which was done to avail benefit of concessional rates of duty by defrauding the government exchequer. These acts and omissions at the end of the importer has rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962.

**19.3.** In view of the above, **I hold that the goods, imported vide impugned bill of entry, were mis-classified under Sr. No. 267 of the exemption Notification, are liable for confiscation under Section 111(m) of the Customs Act, 1962.**

#### **IMPOSITION OF REDEMPTION FINE:**

**20.1.** As I have already held these goods liable for confiscation in previous para under Section 111(m) of the Customs Act, 1962, I find it necessary to consider as

to whether redemption fine under Section 125 (1) of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 (1) *ibid* reads as under:-

**“Section 125. Option to pay fine in lieu of confiscation.**—(1) *Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.*”

**20.2.** I note that the goods in question which are proposed to be confiscated were already cleared and the same are not available physically for confiscation. Thus, **I refrain from imposing redemption fine in respect of goods imported under the impugned bill of entry.**

**21. In view of discussions and findings supra, I pass the following order.**

#### **ORDER**

- i.** I deny benefit of concessional rate of Basic Customs Duty @ 7.5% under Sr. No. 267 of the Notification No. 50/2017-Cus dated 30.06.2017 availed by the noticee in BE No. 8166456 dated 06.04.2022.
- ii.** I order to confiscate the goods having assessable value of **Rs.59,66,383/- (Rupees Fifty Nine Lakh Sixty Six Thousand Three Hundred and Eighty Three Only)** under Section 111 (m) of Customs Act, 1962. I also note that the goods have already been cleared and are not available physically for confiscation; however, as noted above, since the goods are not physically available for confiscation, I do not impose any redemption fine in lieu of such confiscation.
- iii.** I confirm the demand of duty of **Rs.1,93,610/- (Rupees One Lakh Ninety Three Thousand Six Hundred and Ten Only)** under Section

28(4) and order to recover the same from the noticee along with applicable interest under Section 28AA of the Customs Act, 1962.

- iv. I impose a penalty of **Rs.1,93,610/- (Rupees One Lakh Ninety Three Thousand Six Hundred and Ten Only)** on the noticee under Section 114A of the Customs Act, 1962. Provided that the duty as determined, and the interest payable thereon under section 28AA, is paid within 30 days from the date of the communication of this Order, the amount of penalty liable to be paid shall be 25% of the duty. Provided further that the benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of 30 days from the date of the communication of this order.

**22.** This order is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force in the Republic of India.

**23.** The Show Cause Notice bearing F. No. CUS/APR/MISC/12068/2023-Gr 2-O/o Pr Commr-Cus-Mundra dated 04.01.2025 issued to M/s. SYNERGY INDUSTRIES (IEC-0512054843), stands disposed of in above terms.

**Dipak Zala,  
Additional Commissioner of Customs,  
(Import Assessment)  
Customs House, Mundra**

**By RPAD/ By Hand Delivery/Email/Speed Post**

To,

M/s. SYNERGY INDUSTRIES (IEC-0512054843), situated at D-223, SECTOR-03,  
DSIIDC, BAWANA, NEW DELHI-110039

**Copy to:**

1. The Addl. Commissioner (RRA), Customs House, Mundra
2. The Deputy/Assistant Commissioner (PCA/TRC/EDI), CH, Mundra
3. Guard File