

	प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 ई-मेल/ E-Mail: group5-mundra@gov.in	
A	फा /सं. FILE NO.	GEN/ADJ/ADC/2661/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	मूल आदेश सं. ORDER-IN- ORIGINAL NO.	MCH/ADC/ZDC/393/2025-26
C	द्वारा पारित किया गया PASSED BY	Dipak Zala, Additional Commissioner of Customs, Custom House, Mundra
D	आदेश की तिथि DATE OF ORDER	21-11-2025
E	जारी करने की तिथि DATE OF ISSUE	21-11-2025
F	कारण बताओ नोटिस संख्यं तिथि . SCN NO. & DATE	SCN F.No. CUS/ APR/MISC/9646/2024-Gr 5-6 dated 05.12.2024
G	नोटिसीपार्टी / आयातक/ NOTICEE/PARTY/ IMPORTER	M/s R. Mahadeolal Synthetics Ltd. (IEC No. 0304058921) E-510, Shivkripa Market, Kamala Darwaja, Ring Road, Surat, Gujarat – 395 002
H	डिन DIN	20251171MO000000F24E

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान 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 सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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:
“सीमा शुल्क आयुक्त) अपील(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009”
“The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए 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 -
- उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।
The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
- अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of

payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the Customs Act, 1962 should be adhered to in all respects.

8. 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 (Appeals) 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.

BRIEF FACTS OF THE CASE

M/s R. Mahadeolal Synthetics Ltd.(IEC No. 0304058921), E-510, Shivkripa Market, Kamala Darwaja, Ring Road, Surat, Gujarat-395002 (hereinafter referred as the noticee) has filed Bills of Entry for importation of "Children Standing Cycle" under CTH 87120090 (Details as under) through Customs Broker M/s AL Cargo Services.

2. During the course of Audit, Customs Revenue Audit (Para-09, LAR- 22/2021-22), it was observed from the data analysis of Bills of Entry that the said importer had imported that 'Bicycles and other cycles (including delivery tricycles), not motorised' wrongly classification under Customs Tariff Heading (CTH) 8712. Tariff Item 8712 0090 under this CTH includes goods of description 'Other than Bicycles' which attract total customs duty of 24.32% (including 10% BCD, 10% SWS on BCD and 12% IGST). However, Toys viz., 'tricycles, scooters, pedal cars and similar wheeled toys' correct classification under CTH 95030030 and attract total customs duty of 85.92% (including 60% BCD, 10% SWS on BCD and 12% IGST).

3 . During the course of document audit of Custom House (AP&SEZ) Mundra, for the period April to September 2021, it was noticed that the importer had imported goods of item description 'Children Standing Cycle' classifying them under CTH 87120090. On further verification of the description of imported item, it was noticed that this item is known as 'Scooter for kids' in common trade parlance and are categorized 'Toys'. Premier e-commerce websites (viz., Amazon and Flipkart) also categorize these 'Kid's Scooters' under category 'Toys and games'.

Thus, these imported items (wheeled toys) actually merited classification under CTH 9503 0030 under Chapter 95 (Toys, Games and Sports requisites) and duty at the rate 85.92% was payable. This misclassification resulted in short levy of duty of Rs. 28,03,720/-, which is recoverable along with applicable interest. The details are as under:

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Table-I

BE NO	BE Date	Item No	Qty.	UQC	Ass Value	Duty paid @ 24.32%	Duty payable @ 85.92%	Differential Duty payable
3609404	17-04-2021	1	720	PCS	119206	28991	102422	73431
3993415	18-05-2021	3	376	PCS	61108	14862	52504	37642
4103595	27-05-2021	1	1008	PCS	162396	39495	139531	100036

4103595	27-05-2021	2	3624	PCS	583853	141993	501646	359653
4474203	27-06-2021	4	300	PCS	48626	11826	41779	29953
4669158	13-07-2021	2	1008	PCS	165026	40134	141790	101656
4694917	15-07-2021	1	306	PCS	50097	12184	43044	30860
4805305	24-07-2021	1	4456	PCS	730489	177655	627636	449981
5146552	21-08-2021	2	2244	PCS	366892	89228	315233	226005
5164042	23-08-2021	3	2220	PCS	362968	88274	311862	223588
5322246	5/9/2021	1	4600	PCS	739593	179869	635459	455590
5408835	11/9/2021	1	6480	PCS	1041862	253381	895168	641787
5594673	26-09-2021	1	738	PCS	119379	29033	102570	73537
Total					45,51,494/-	11,06,924/-	39,10,643/-	28,03,720/-

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

A. 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".

B. 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".

C. 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:

(C) SECTION 112. Penalty for improper importation of goods, etc.

- 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

(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.

D. *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:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 1 [28AA], and twenty-five per cent. of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114

5 Whereas it appears that the importer has misclassification of the goods as description of the item i.e "Wheeled Toy (Scooter)", it appears that the imported goods correct classification under 95030030 and leviable total duty 85.92% (60% BCD, 10% SWS on BCD and 12% IGST).

6. With the introduction of self-assessment under Section-17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self- assessment by the importer, they have been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon them by the law of the land. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as Importer has failed to correctly self-assess the duty on the impugned goods and has also wilfully violated the provisions of sub-section (4) and (4A) of Section 46 of the Act Therefore, the goods having assessable value of Rs. 45,51,494/- imported vide the said Bill of Entry appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

7 . Whereas it appears that the importer has misclassification of the goods as which has resulted into short payment of duty amounting to Rs. 28,03,720/- -which is required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Act. For such act of omission and commission, the importer has rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

8. Accordingly, a Show Cause Notice vide F.No. CUS/APR/MISC/9646/2024-Gr 5-6 dated 05.12.2024 and its corrigendum dated 19.07.2025 were issued to the importer, calling upon them to show cause as to why:

(i) The imported goods i.e. (wheeled toys) actually merited classification under CTH 9503 0030 under Custom Tariff Act, 1975;

(ii) The above said goods having assessable value of **Rs. 45,51,494/-** should not be held liable for confiscation under Section **111(m)** of the Customs Act, 1962;

(iii) Differential duty amounting to **Rs. 28,03,720/-** (Rupees Twenty Eight Lakh Three Thousand Seven Hundred and Twenty only) not paid/short paid along with the applicable interest under Section 28AA by them on the aforesaid imported goods not be demanded under Section 28(4) of the Customs Act, 1962.

(iv) Penalty should not be imposed upon them under Section 112(a)(ii) and/or 114A of the Customs Act, 1962.

PERSONAL HEARING AND SUBMISSIONS

9. The importer was granted ample opportunities of Personal Hearing in the matter on 30.06.2025, 25.08.2025 and 13.11.2025. However, the importer neither appeared for hearing nor submitted any written reply to the Show Cause Notice.

DISCUSSION AND FINDINGS

10. I have carefully gone through the Show Cause Notice and all the documentary evidence available on record. I find from the records of the case that the noticees did not participate in the adjudication proceedings. This office had given ample opportunity to the noticee for personal hearing i.e. on 30.06.2025, 25.08.2025 and 13.11.2025. However, neither the noticee nor their authorized representatives appeared for the personal hearing on the above dates. I therefore find that sufficient opportunities have been given to the noticees and the noticees failed to avail of such opportunity. There is no dispute about the fact that need of speedy adjudication is essential to put an end to litigation. It is further a matter of fact that adjudication proceedings need to be finalized within the stipulated time. With regard to proceeding to decide the case ex-parte, it is observed that *Hon'ble High Court of Allahabad in the case of Modipon Ltd. vs Collector of C. Excise, Meerut on 19 August, 1996* has effectively dealt with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below -

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.....”

19. “No doubt hearing includes written submissions and personal hearing as well but the principle of Audi Alteram Partem does not make it imperative for the authorities to compel physical presence of the party concerned for hearing and go on adjourning the proceeding so long the party concerned does not appear before them. What is imperative for the authorities is to afford the opportunity. It is for the party concerned to avail the opportunity or not. If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice. In the instant case as stated in detail in preceding paragraphs, repeated adjournments were granted to the petitioners, dates after dates were fixed for personal hearing, petitioners filed written submissions, the administrative officer of the factory appeared for personal hearing and filed written submissions, therefore, in the opinion of this Court there is sufficient compliance of the principles of natural justice as adequate opportunity of hearing was afforded to the petitioners.

20. For the sake of arguments it was asked by this Court during the course of arguments as to what submissions the petitioners would have made at the time of personal hearing but nothing substantial was suggested by the learned counsel for the petitioners in this regard.

21. It may be recalled here that the requirement of natural justice varies from cases to cases and situations to situations. Courts cannot insist that under all circumstances personal hearing has to be afforded. Quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the persons concerned but it cannot be held that before dismissing such applications in all events the quasi-judicial authorities must hear the applicants personally. When principles of natural justice require an opportunity before an adverse order is passed, it does not in all circumstances mean a personal hearing. The requirement is complied with if the person concerned is afforded an opportunity to present his case before the authority. Any order passed after taking into consideration the points raised in such applications shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. See *Union of India and Anr. v. Jesus Sales Corporation* [1996 (83) E.L.T. 486 (S.C.) = J.T. 1996 (3) SC 597].”

In view of the above and rely upon the aforesaid judgement, I am proceeding to decide the case ex-parte on the basis of the facts and evidence on record. The issues to be decided by me are:

(i) Whether the imported goods i.e. wheeled toys (Children Standing Cycle) should be classified under CTH 95030030 instead of CTH 87120090;

(ii) Whether the goods covered under the Bills of Entry as per **Table-I**, supra having total assessable value of **Rs. 45,51,494/-** should be held liable for confiscation under **Section 111(m)** of the Customs Act, 1962;

(iii) Whether the differential duty of **Rs. 28,03,720/-** should be recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA;

(iv) Whether penalty should be imposed under Sections 112(a)(ii) and/or 114A of the Customs Act, 1962.

11.1 Regarding the first issue of classification of the imported goods described as Children Standing Cycle (wheeled toys), I need to examine the nature and function of these goods as described and determine their correct classification under the Customs Tariff.

11.2 I find that the importer has classified these goods under CTH 87120090 which covers 'Bicycles and other cycles (including delivery tricycles), not motorised - Other than Bicycles' attracting total customs duty of 24.32% (including 10% BCD, 10% SWS on BCD and 12% IGST). As per the Show Cause Notice, during the audit, Customs Revenue Audit (Para-09, LAR-22/2021-22), it was observed from the data analysis of Bills of Entry that 'Bicycles and other cycles (including delivery tricycles), not motorised' merit classification under Customs Tariff Heading (CTH) 8712. However, Toys viz., 'tricycles, scooters, pedal cars and similar wheeled toys' merit classification under CTH 95030030 and attract total customs duty of 85.92% (including 60% BCD, 10% SWS on BCD and 12% IGST).

11.3 Further, as per the Show Cause Notice, during the course of document audit of Custom House (AP&SEZ) Mundra, for the period April to September 2021, it was noticed that the importer had imported goods of item description 'Children Standing Cycle' classifying them under CTH 87120090. On further verification of the description of imported item, it was noticed that this item is known as 'Scooter for kids' in common trade parlance and are categorized 'Toys'. Thus, these imported items (wheeled toys) actually merited classification under CTH 9503 0030 under Chapter 95 (Toys, Games and Sports requisites).

11.4 I find that Chapter 95 of the Customs Tariff covers "Toys, games and sports requisites; parts and accessories thereof". CTH 9503 specifically covers "Tricycles, scooters, pedal cars and similar wheeled toys". The description of the imported goods as "Children Standing Cycle" and their identification as 'Scooter for kids' in common trade parlance clearly indicates that these are wheeled toys meant for children and not bicycles or cycles meant for transportation. The principle of common parlance is well-established in classification matters. The goods should be classified according to how they are understood in common trade usage. In the present case, as per the audit findings reproduced in the Show Cause Notice, these goods are known as 'Scooter for kids' in common trade parlance and are categorized 'Toys'. This establishes that the commercial understanding of these goods is that they are toys for children.

11.5 I find that the classification under CTH 87120090 as claimed by the importer is inappropriate because the goods are not primarily meant for transportation but for children's play and recreation, and they fall squarely within the description of "Tricycles,

scooters, pedal cars and similar wheeled toys" under heading 9503. The term "Children" in the description "Children Standing Cycle" itself indicates recreational use rather than transportation.

11.6 Therefore, I find that the imported goods i.e. wheeled toys (Children Standing Cycle) should be correctly classified under CTH 95030030 and not under CTH 87120090 as declared by the importer. The classification under CTH 87120090 is hereby rejected.

12.1 Regarding the second issue, I find that Section 111(m) of the Customs Act, 1962 provides for confiscation of "any goods which do not correspond in respect of value or in any other particular with the entry made under this Act".

12.2 In the present case, I find that the importer declared the goods under CTH 87120090 in the Bills of Entry. The correct classification of the goods is CTH 95030030 as established above. This mis-classification resulted in payment of duty at 24.32% instead of 85.92%. The duty liability in the present case, is as follows:

BE NO	BE Date	Item No	Qty.	UQC	Ass Value	Duty paid @ 24.32%	Duty payable @ 85.92%	Differential Duty payable
3609404	17-04-2021	1	720	PCS	119206	28991	102422	73431
3993415	18-05-2021	3	376	PCS	61108	14862	52504	37642
4103595	27-05-2021	1	1008	PCS	162396	39495	139531	100036
4103595	27-05-2021	2	3624	PCS	583853	141993	501646	359653
4474203	27-06-2021	4	300	PCS	48626	11826	41779	29953
4669158	13-07-2021	2	1008	PCS	165026	40134	141790	101656
4694917	15-07-2021	1	306	PCS	50097	12184	43044	30860
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5322246	5/9/2021	1	4600	PCS	739593	179869	635459	455590
5408835	11/9/2021	1	6480	PCS	1041862	253381	895168	641787
5594673	26-09-2021	1	738	PCS	119379	29033	102570	73537
Total					45,51,494/-	11,06,924/-	39,10,643/-	28,03,720/-

12.3 I find that the goods do not correspond in respect of classification and description with the entry made in the Bill of Entry. The mis-classification in the present case is a substantial mis-declaration that resulted in significant duty evasion amounting to **Rs. 28,03,720/-**. The mis-classification in the present case has resulted in short payment of duty.

12.4 I find that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as the importer has failed to correctly self-assess the duty on impugned goods and has also wilfully violated the provisions of Sub-sections (4) and (4A) of Section 46 of the Act. Therefore, I find that the goods are liable to confiscation under **Section 111(m)** of the Customs Act, 1962.

12.5 Once the goods are held liable for confiscation under Section 111(m) of the Customs Act, 1962, the next question before me is whether to impose redemption fine under Section 125 of the Customs Act, 1962. Sub-section (1) of Section 125 provides that:

"Wherever confiscation of any goods is authorized by this Act, the officer adjudicating

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."

However, I find that the goods in question were already cleared for home consumption and are not physically available for confiscation. In view of the physical non-availability of the goods, I refrain from imposing any redemption fine under Section 125 of the Customs Act, 1962 in respect of goods covered under the Bills of Entry as mentioned in **Table-I**, supra.

13.1 Regarding the third issue, I find that Section 28(4) of the Customs Act, 1962 provides that where any duty has not been levied or paid or has been short-levied or short-paid by reason of collusion, willful mis-statement or suppression of facts by the importer, the proper officer shall, within five years from the relevant date, serve notice requiring payment of the short-levied/short-paid duty.

13.2 In the present case, I find that the importer has willfully mis-stated the facts by wrongly classifying the subject goods under CTH 87120090 instead of the correct classification under CTH 95030030, thereby paying duty at 24.32% instead of the applicable rate of 85.92%. This resulted in short payment of differential duty amounting to Rs. 28,03,720/-. Further, I find that the importer has not responded to the Show Cause Notice or appeared for personal hearing on three occasions dated 30.06.2025, 25.08.2025 and 13.11.2025. This non-cooperation further demonstrates an absence of bona fides on the part of the importer.

13.3 I find that the short payment of duty amounting to **Rs. 28,03,720/-** was by reason of willful mis-statement of facts in the Bills of Entry. The Show Cause Notice was issued within the extended period of five years as provided under Section 28(4) of the Customs Act, 1962 for cases involving willful mis-statement. Accordingly, I confirm the differential duty demand of **Rs. 28,03,720/-** (Rupees Twenty Eight Lakh Three Thousand Seven Hundred and Twenty only) as detailed in **Table-I**, supra, recoverable under **Section 28(4)** of the Customs Act, 1962 alongwith applicable interest thereon under **Section 28AA** of the Customs Act, 1962.

14.1 Regarding the fourth issue, I find that Section 114A of the Customs Act, 1962 provides for penalty where duty has been short-levied by reason of collusion or any willful mis-statement or suppression of facts. In the present case, I find that the importer has willfully mis-classified the imported goods under CTH 87120090 instead of CTH 95030030, paid duty at 24.32% when the applicable rate was 85.92%, resulted in short payment of duty amounting to **Rs. 28,03,720/-**.

14.2 The mis-classification amounts to a willful mis-statement of facts in the Bills of Entry. Considering the nature and gravity of the violation, the quantum of duty evaded, the deliberate nature of the mis-classification, and the complete non-cooperation of the importer in the adjudication proceedings, I find it appropriate to impose a penalty under **Section 114A** of the Customs Act, 1962.

14.3 Further I note that the last proviso to the Section 114A states that "*where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.*" In the present case, since I am imposing penalty under Section 114A of the Customs Act, 1962, I refrain from imposing penalty under **Section 112(a)(ii)** of the Customs Act, 1962.

15. In view of the foregoing discussion and findings, I pass the following order:

ORDER

(i) I order to reject the classification declared by the importer of the imported goods i.e. wheeled toys (Children Standing Cycle) under CTH 87120090 and confirm that the said goods are correctly classifiable under CTH 95030030;

(ii) I hold that the goods covered under the Bills of Entry as mentioned in **Table-I**, supra, having assessable value of **Rs. 45,51,494/-** (Rupees Forty Five Lakh Fifty One Thousand Four Hundred and Ninety Four only) are liable for confiscation under **Section 111(m)** of the Customs Act, 1962. Since the subject goods have already been cleared in the past and are not available for confiscation, I refrain from imposing any Redemption fine under Section 125 of the Customs Act, 1962.

(iii) I confirm the differential duty demand of **Rs. 28,03,720/-** (Rupees Twenty Eight Lakh Three Thousand Seven Hundred and Twenty only) under **Section 28(4)** of the Customs Act, 1962 along with applicable interest under **Section 28AA** of the Customs Act, 1962 in respect of Bills of Entry as mentioned in Table-I, supra;

(iv) I impose a penalty of **Rs. 28,03,720/-** (Rupees Twenty Eight Lakh Three Thousand Seven Hundred and Twenty only) under Section **114A** of the Customs Act, 1962.

16. This order is issued without prejudice to any other action that may be taken against the importer or any other person(s) under the provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

17. The Show Cause Notice No. CUS/APR/MISC/9646/2024-Gr 5-6 dated 05.12.2024 stands disposed of in above terms.

(Dipak Zala)

Additional Commissioner (Import)
Custom House, Mundra

To,

M/s R. Mahadeolal Synthetics Ltd. (IEC No. 0304058921)
E-510, Shivkripa Market,
Kamala Darwaja, Ring Road
Surat, Gujarat – 395 002

Copy to:

1. The Deputy Commissioner, Review Section, Custom House, Mundra
2. The Deputy Commissioner, TRC, Custom House, Mundra
3. The Deputy Commissioner, EDI, Custom House, Mundra
4. Guard File