

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b> <b>PHONE : 02838-271426/271163 FAX :02838-271425</b> <b>E-mail id- adj-mundra@gov.in</b></p>	
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<b>A</b>	फा. सं./FILE NO.	F. No. GEN/ADJ/ADC/793/2024-Adjn
<b>B</b>	मूल आदेश संख्या/ <b>ORDER-IN-ORIGINAL NO.</b>	MCH/ADC/AKM/308/2024-25
<b>C</b>	द्वारा पारित किया गया/ <b>PASSED BY</b>	अमित कुमार मिश्रा अपर आयुक्त सीमा शुल्क सीमा शुल्क भवन, मुन्द्रा
<b>D</b>	आदेश की तिथि <b>DATE OF ORDER</b>	24.02.2025
<b>E</b>	जारी करने की तिथि <b>DATE OF ISSUE</b>	24.02.2025
<b>F</b>	कारण बताओ नोटिस संख्या & तिथि <b>SCN NUMBER &amp; DATE</b>	CUS/APR/33/2023-Gr-3-O/o Pr Commr-Cus- Mundra dt. 18.03.2024
<b>G</b>	आयातक/ नोटिस प्राप्तकर्ता <b>IMPORTER / NOTICEE</b>	1. M/s Primacy Industries Ltd.
<b>H</b>	डिन संख्या /DIN NUMBER	20250271MO000005330D

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त) अपील(,

चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,

नवरंगपुरा, अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**

**HAVING HIS OFFICE AT 4<sup>TH</sup> FLOOR, HUDCO BUILDING, ISHWAR BHUVAN  
ROAD,**

**NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. 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 be 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 के मद सं°-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. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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।

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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 माग 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**

1. M/s. Primacy Industries Limited, Plot No. 314- 315, GIDC Industrial Area, Mithirohar, Taluka Gandhidham-370240 having IEC No. 0704014378 (hereinafter also referred to as the Importer" for the sake of brevity) filed Bills of Entry, as detailed in Annexure-A to this Notice, through their CB M/s. A D Mehta Clearing Agency for import of glassware items viz. Reed Diffusers, Thick Sham Cups, etc. by misclassifying them under CTH 70109000 which attracts BCD@ 10% Adv while the goods are actually classifiable under CTH 7013 which attracts BCDQ 20% Adv. Therefore, it appears that importer has made wrong payment of "BCD @ 10% in CTH 7010 instead of the applicable rate of 20% in CTH 7013".

2. Whereas, letter dated 20.01.2023 and subsequent reminder dated 27.03.2023 was issued to the importer. Reply was received from the importer wherein they have submitted that:

- a. The glass imported by them is used as raw material for manufacturing of candle whereby said glass is an enclosure to candle. For reference, they have enclosed photograph of candle jar which is exported by them from their EOU unit (LOP No. KASEZ/100%EOU/1/08/2011-22/409 1/DT.22.07.2022).
- b. Considering the use of the imported glass, it is rightly classifiable under CTH 7010. CTH 7013 is not applicable as said CTH is for glassware of a kind used in table, kitchen, toilet, office or for indoor decoration. The glass imported by them cannot be classified under CTH 7013 as said glass is not a glassware used for kitchen, table and office.
- c. In order to support the classification adopted by them, they have placed reliance on the judgement of the Hon'ble Tribunal in case of CHENDUR ENTERPRISES versus COMMISSIONER OF CUSTOMS, TUTICORIN (2022 (381) E.L.T. 82 (Tri.-Chennai). The issue covered in the said judgement is about classification of glass bottle. The importer in the said judgement has classified glass bottle under CTH 70109000 but department was of the view that the correct CTH is 70139900.
- d. Hon'ble Tribunal in the said judgement has held that the glass bottle is required to be classified under CTH 70109000 and not 70139900 since CTH 7013 is only for glassware used as tableware or kitchenware.
- e. Therefore, classification adopted by them is correct keeping in view the use of the glass as well as decision of Hon'ble Tribunal.

3. Whereas, imported glassware items such as tempered glass lid, drinking glass, Reed Diffuser etc. as listed in Table 1 below are normally type of kitchenware to be appropriately classified under 7013, whereas they are being classified in two different CTHs. Goods classifiable under CTH 7010 attracts BCD @ 10 % Adv while Goods classifiable under CTH 7013 attracts BCD rate @ 20% Adv.

**3.1.** The description under CTH 7010 and CTH 7013 given in the Customs Tariff of India is as under:

7010: CARBOYS, BOTTLES, FLASKS, JARS, POTS, PHIALS, AMPOULES AND OTHER CONTAINERS, OF GLASS, OF A KIND USED FOR THE CONVEYANCE OR PACKING OF GOODS; PRESERVING JARS OF GLASS; STOPPERS, LIDS AND OTHER CLOSURES, OF GLASS

70101000 -	Ampoules	kg.	10%
70102000 -	Stoppers, lids and other closures	kg.	10%
70109000 -	Other	kg.	10%

7013: GLASSWARE OF A KIND USED FOR TABLE, KITCHEN, TOILET, OFFICE, INDOOR DECORATION OR SIMILAR PURPOSES (OTHER THAN THAT OF HEADING 7010 OR 7018)

70131000 - Of glass-ceramics kg. 20%

- Stemware drinking glasses, other than of Glass Ceramics :

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- Other drinking glasses, other than of glass ceramics

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- Glassware of a kind used for table (other than drinking glass) or Kitchen purposes, other than of glass-ceramics

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- Other glassware

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70139900 -- Other Kg. 20%

**3.2.** As per HSN explanatory notes of Heading 7013, the following type of articles are covered in 7013:

1. Table or kitchen glassware e.g drinking glasses, goblets, tankards, decanters, infants feeding bottles, pitcher, jugs, plates, salad bowls, sugar-bowls, sauce-boats, fruit-stands, cake stand, hors-d'oeuvers dishes, bowls, basins, egg-cups, butter dishes, oil or vinegar cruets, dishes (for serving, cooking etc), stew-pans, casseroles, trays, salt cellars, sugar sifters, knife-rests, mixers, table hand bells, coffee-pots and coffee-filters, sweetmeat boxes, graduated kitchenware, plate warmers, table mats, certain parts of domestic churns, cups for coffee-mills, cheese dishes, lemon squeezers, ice-buckets.
2. Toilet articles such as soap dishes, sponge-baskets, liquid soap distributors, hooks and rails (for towels), powder bowls, perfume bottles, parts of toilet sprays (other than heads) and tooth brush holders.
3. Office glassware such as paperweights, inkstands and inkwells, book ends, containers for pins, pen-trays and ashtrays.
4. Glass ware for indoor decoration and other glassware (including that for churches and the like), such as vases, ornamental fruit bowls, statuettes, fancy articles (animal, flowers, foliage, fruit, etc), table centres (other than those of heading 70.09), aquaria, incense burners etc. and souvenirs bearing views.

**3.3.** The goods taken up for analysis are of following types:

Sr.No.	Items
1	Tempered Glass lids of Different types (G Type, C type, HP Type, Single Hole, Double hole, Dome Shaped, Flat Shaped etc)
2	Glass Tea Pot
3	Glass Bowl
4	Thick Sham Cup and White Frost Cambered Cup
5	Glass Cake Stand
6	Spare Glass of Photoframe

Table 1



4. Whereas, the imported item at Sr. No. 1 of table above i.e. Glass Lid of different types G Type, C type, HP Type, Single Hole, Double hole, Dome Shaped, Flat Shaped are specially tempered glass lids or closures with single or double holes in the lid where a wooden/steel/plastic handle will be attached after importation.

**4.1.** Glass Lids mentioned above are extensively found in cookware, ovenware, kitchenware, and household ware. A glass lid is made of two parts, a piece of dome like glass and a piece of stainless-steel strip wraps around glass edge. Glass lids are usually used for heating, cooking, steaming and baking. They are also handled frequently. They

must be tough and heat resistant. Therefore, glass lids are always tempered for high impact strength and remarkable thermal stable. Glass lid for pots and pans seals in heat and flavor while foods cook. The Tempered Glass Lid provides clear view of the cooking process and keeps intact the heat and flavour of the food while cooking. It is therefore unambiguous that the glass lids are “kitchen/cooking glassware” merited classification under Heading 7013. As per General Rules of Interpretation (GRI's) taken in order, GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

**4.2.** Whereas, Heading 7010 specifically provides for certain glass containers used for the conveyance or packing of goods and also includes closures for the type of containers provided for in heading 7010. The closures / Lids / stoppers described in the Headings of Heading 7010 are of the type that will be used for containers which will be used only for the conveyance or packing of goods. It does not include other glass containers being domestic glassware / kitchenware and accordingly their closure.

**4.3.** Whereas, the doctrine of ejusdem generis is a useful aid in interpreting the construction of statutes and Customs tariff. The Court of International Trade (CIT) defined the canon of construction ejusdem generis, which means literally, **of the same class or kind**, teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described. Heading 7010 consists of particular words (i.e., carboy, flasks, jars, ampoules, etc.) followed by general terms (i.e., stoppers, lids and other closures of glass). Therefore, this heading requires an ejusdem generis method of construction.

**4.3.1.** The subject glass lids in discussion are not ejusdem generis with the articles described within heading 7010. The general terms of stoppers, lids and other glass closures refer to the type of closures which fit the specific kind of containers (i.e., flasks, jars, ampoules, etc.) which are commonly used commercially for the conveyance or packing of goods. The subject glass lids are not the type of lids to be used with glass containers for the conveyance of goods. Instead, the glass lids are specifically designed to be used as kitchen/cooking glassware classified in Heading 7013.

**4.4.** At the time of importation, the glass lids may be imported in an unfinished condition, requiring further assembly of a wooden/plastic/steel handle. GRI 2(a) provides that "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented; the incomplete or unfinished article has the essential character of the complete or finished article." Based upon GRI 2(a), it appears that the glass lids without wooden/plastic/steel handle have the essential character of specially tempered kitchen glassware, thus, classifiable under CTH 7013.

**4 . 4 . 1 .** The GRI 3(a) provides that “The heading which provides the most specific description shall be preferred to headings providing a more general description.....”. The Heading 7013 “GLASSWARE OF A KIND USED FOR TABLE, KITCHEN, TOILET, OFFICE” more appropriately describe Tempered Glass Lid, as they are meant to be used only as kitchen wares for cooking, baking, serving, heating and

steaming. They do not appear to be used with specific kind of containers (i.e., flasks, jars, ampoules, etc.) which are commonly used commercially for the conveyance or packing of goods. Therefore Heading 7013 appropriately gives specific description of Tempered Glass Lid over Heading 7010.

**4.5.** Whereas, the articles mentioned at S. No. 2 to 6 in the above table namely Glass Tea Pot, Glass Bowl, Thick Sham Cup and White Frost Cambered Cup, Glass Cake Stand, Spare Glass of Photo frame are glassware items of a kind used for table, kitchen and indoor decoration.

**4. 5. 1.** The items Glass Tea Pot, Glass Bowl, Thick Sham Cup and White Frost Cambered Cup, Glass Cake Stand, Spare Glass of Photo frame are not the items/containers intended to be used for conveyance or packing of goods. These are the glass wares meant to be used Table, Kitchen, Office, Indoor Decoration or Similar Purposes. Therefore, the items under discussion are correctly classifiable under heading 7013 as per General Rules of Interpretation (GRI's. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

5. Therefore, the above described goods S. No. 1 to 6 in Table 1 merit classification under Heading 7013 leviable to BCD @ 20 % Adv instead of Heading 7010 leviable to BCD @ 10 % Adv and such goods which appear to have misclassified under CTH 7010 resulting in short payment of BCD, SWS and IGST. The Bills of Entry covered in this notice are the BEs where the classification has been done under CTH 7010. The short payment of duty has been annexed as Annexure-A to this Notice.

6. Relevant Legal provisions, in so far related to the facts of the case are as under:-

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. Section 46(4) and 46(4A) are reproduced below:-*

**Section 46(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 46(4A)** – “*The importer who presents a bill of entry shall ensure the following, namely:-*

a. *the accuracy and completeness of the information given therein;*  
b. *the authenticity and validity of any document supporting it; and*  
c. *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

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:*

d. **SECTION 111. Confiscation of improperly imported goods, etc.** - The following goods brought from a place outside India shall be liable to confiscation :-

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act.*

e. **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.*

*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:*

7. It appears that the importer has willfully mis-stated the facts & misclassified the glassware items viz. Reed Diffusers, Thick Sham Cups, etc. under CTH 7010 which attracts BCD@ 10% Adv while the goods are actually classifiable under CTH 7013 which attracts BCD@ 20% Adv. Therefore, the importer has made wrong payment of BCD @ 10% under CTH 7010 instead of the applicable rate of 20% under CTH 7013.
8. In the light of the discussion and documentary evidences as brought out above and the legal position, it appears that with intent to avoid payment of duty at higher rate, the importer resorted to misclassifying glassware items viz. Reed Diffusers, Thick Sham Cups, etc. under CTH 7010 which attracts BCD@ 10% Adv.
9. Whereas, it is apparent that the importer claimed the undue benefit of lower BCD Rate @ 10% by misclassifying glassware items viz. Reed Diffusers, Thick Sham Cups, etc. under CTH 7010 while the goods are actually classifiable under CTH 7013 which attracts BCD@ 20% Adv. 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 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 **₹2,36,59,276/- (Rupees Two Crore Thirty Six Lakh Fifty Nine Thousand Two Hundred and Seventy Six only)** imported vide Bills of Entry, as detailed in Annexure-A to this Notice, appear liable for confiscation under Section 111(m) of the Customs Act, 1962.

10. It appears that the importer wilfully claimed undue benefit for the impugned goods resulting into short levy of duty. Further, it appears that in respect of the Bills of Entry, as detailed in Annexure-A to this Notice, such wrong claim of lower BCD Rate on the part of the Importer by misclassifying the goods under CTH 7010 (which attracts BCD@ 10% Adv) instead of correct CTH 7013 (which attracts BCD@ 20% Adv) has resulted into short levy of duty of **₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty Six Only)** which is recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act. For such act of omission and commission, the importer has rendered themselves liable to penalty under Section 112(a)(ii) and/or 114A of the Customs Act, 1962.
11. Now, therefore, M/s. Primacy Industries Limited, Plot No. 314- 315, GIDC Industrial Area, Mithirohar, Taluka Gandhidham-370240 are hereby called upon to show cause to the **Additional Commissioner of Customs, Import Assessment**, Custom House, Mundra, having office at 1st Floor, Room No. 103, PUB Building, 5B, Mundra (Kutch) Gujarat 370 421, as to why:
  - i. The goods having assessable value of **₹2,36,59,276/- (Rupees Two Crore Thirty Six Lakh Fifty Nine Thousand Two Hundred and Seventy Six only)** covered under Bills of Entry, as detailed in Annexure-A to this Notice, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
  - ii. The classification of the goods declared under CTH 70109000 in Bills of Entry mentioned in Annexure-A to this Notice, should not be rejected and goods be reclassified under CTH 70139900 and reassessed accordingly at BCD rate @ 20% Adv;
  - iii. The differential duty of **₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty- Six Only)** in respect of Bills of Entry, as detailed in Annexure-A to this Notice, should not be recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA 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.

## 12. Personal Hearing

**12.1** Personal hearing in this case was given on 04.11.2024 In response to which no one appeared for the PH.

**12.2** Another PH was scheduled on 23.12.2024 (rescheduled to 26.12.2024) in which Shri Rajesh Kumar, Sr. Manager Finance appeared for the Ph and claimed that the Classification done by them is correct and stated to submit his written submission within a week.

**12.3** Further, Another PH was given to the importer on 24.02.2025. In response to which he stated that He did not want any PH and requested the case to be decided on the basis of the previous submission

**13. Defense Submission**

**13.1** Shri Rajesh Kumar, Sr. Manager Finance of M/s Primacy Industries Ltd. appeared vide his e-mail dt. 26.12.2024 made following submission. The same is reproduced as below.

**BEFORE HON'BLE ADDITIONAL COMMISSIONER OF  
CUSTOMS, IMPORTS ASSESSMENT, CUSTOM HOUSE,  
MUNDRA, FIRST FLOOR ROOM NO.103, PUB BUILDING, 5B  
MUNDRA (KUTCH) GUJARAT 370 421**

IN THE MATTER OF:

SHOW CAUSE NOTICE NO. DIN -  
2024037/M0000000AC8/9504 DATED 18.03.2024  
AND IN THE MATTER OF:

M/s. PRIMACY INDUSTRIES PRIVATE LIMITED, 314 315  
Jai shakti Engineering and Construction, GIDC Industrial area  
Mithirohar Gandhi Dham Gujarat 370 240  
..... NOTICEE

**MOST RESPECTFULLY SHEWETH**

1. The Noticee vide letter dated 27.05.2024 has filed 28.05.2024 a detailed reply to the impugned SCN and in pursuant to the same Noticee would like to submit the following additional submission.
2. It is the case of the department in the impugned SCN that the Noticee is required to pay differential GST of Rs.7,05,046.00 on differential custom duty, as the classification of the goods declared under CTH 70109000 is not correct and it should be re-classified-under-CTH-70139900-and reassess BCD @ 20%.
3. The Noticee in the main reply dated 27.05.2024, explained that the imported glass items are not tableware or kitchenware but used as an enclosure to candles and it is rightly classified under CTH 70109000.
4. In the impugned SCN , in the point no. 3.3 mentioned the goods taken for analysis and attached the photograph is not our imported glass items, the item mentioned differs from the imported glass items. We have already shared the photograph of our imported Glass items in our reply to SCN dated 27.05.2024.

Since the item selected for the analysis and mentioned in the SCN itself is wrong hence the SCN needs to be dropped.

5. Considering the nature of the product, the competing entries under the Tariff Schedule are as follows:
  - a. CTH 7010 covering '*Carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass*'
  - b. CTH 7013 covering '*Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)*'.

6. CTH 7010

The CTH 7010 *inter alia* covers

CTH/CTSH/CTI	Description
7010	<b>Carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass</b>
7010 10 00	-Ampoules
7010 20 00	- Stoppers, lids and other closures
7010 90 00	- Other

7. The HSN Explanatory Note to heading 70.10, given at Page No. XIII-7010-1, provides that the said heading *inter alia* covers jars, pots and similar containers for conveyance and packing of various goods, viz., foodstuffs, cosmetic or toilet preparations, pharmaceutical products, polishes and cleaning preparations.

8. Further, in terms of the HSN Explanatory Note to heading 70.10, given at Page No. XIII-7010-1, these articles are usually made of ordinary glass by pressure in a mould usually followed by blowing with compressed air.
9. In the instant case, the glass articles are made of ordinary glass, and at import condition are non-decorative and are not specialized for use with candles in any way, and as a result, can be used for packing and conveying any number of goods including foodstuffs, cosmetic or toilet preparations, pharmaceutical products, polishes and cleaning preparations, and are therefore in the nature of the products mentioned in the Explanatory Note to heading 70.10
10. In terms of **CROSS Ruling bearing No. HQ H285657 dated 11.07.2024**, it was held that the types of containers found in heading 7010 are solely used to convey a product to the consumer who uses the products in the container and then discards the container, and it is imperative that the form of the item indicates that it belongs to a class or kind of merchandise that will be principally used in this manner for it to be classified as a container under heading 7010.
11. Further, in terms of **CROSS Ruling bearing No. HQ H285657 dated 11.07.2024**, it was held that there are no physical features that characterize or distinguish glass articles used with candles. Rather, it is household storage jars and drinking glasses that fall within certain typical parameters for size and shape that are filled with wax and wick after importation and are subsequently used to convey candles to the ultimate consumer, and since these glass articles are not used for in-home decoration, storage or consumption, and are used for conveyance of poured candles are marketed and sold as filled candles, they merit classification under heading 7010.
12. The HSN Explanatory Note to heading 70.13, given at Page No. XIII-7013-1 provides that the said heading *inter alia* includes glassware for indoor decorations and other glassware such as vases, ornamental fruit bowls, statuettes, fancy articles, table centres, aquaria, incense burners and souvenirs bearing views.

13. Further, in terms of the HSN Explanatory Note to heading 70.13, given at Page No. XIII-7013-2, the articles in the said heading may be of ordinary glass, lead crystal, glass having a low coefficient of expansion or of glass ceramics.

14. In the instant case, the glass articles, in import condition, are not ornamental or used for indoor decorations. They are also not in the form of vases, ornamental fruit bowls, statuettes, fancy articles, table centres, aquaria, incense burners or souvenirs bearing views and are therefore, not in the nature of the goods covered by heading 70.13.

15. Further, in terms of **CROSS Ruling bearing No. HQ H285657 dated 11.07.2024**, it was held that glass containers of a kind not used for home decoration, storage or consumption, and are used for conveyance of poured candles and are marketed and sold as filled candles will merit classification under heading 7010 and not 7013.

16. In light of the above, it is clear that glass articles for candles do not merit classification under CTH 7013 and are rightly classifiable under CTH 7010 and recovery of GST on account of CTH classification is not sustained in law, therefore the proposal made in the impugned SCN should be dropped in toto.

17. The Noticee hereby requests to accept the above additional submissions and consider the same as part and parcel of the main reply.

**for PRIMACY INDUSTRIES PRIVATE LIMITED**

**(AUTHORISED SIGNATOR)**

Place : Mangalore  
Date: 23.12.2024

**BEFORE HON'BLE ADDITIONAL COMMISSIONER OF CUSTOMS ,  
IMPORTS ASSESSMENT, CUSTOM HOUSE, MUNDRA, FIRST FLOOR  
ROOM NO.103, PUB BUILDING, 5B MUNDRA (KUTCH) GUJARAT 370 421**

IN THE MATTER OF:

SHOW CAUSE NOTICE NO. DIN – 2024037/M00000000AC8/9504  
DATED 18.03.2024

AND IN THE MATTER OF:

M/s. PRIMACY INDUSTRIES PRIVATE LIMITED, 314 315 Jai shakti  
Engineering and Construction, GIDC Industrial area Mithirohar Gandhi  
Dham Gujarat 370 240 ..... NOTICEE

***MOST RESPECTFULLY SHEWETH***

1. By the aforesaid Show Cause Notice dated 18.03.2024 (herein after referred to as 'SCN') issued to M/s Primacy Industries Private Limited, 314-315 GIDC, Industrial area Mithrohar Gandhi Dham, Gujarat 370240 (hereinafter referred to as 'Noticee ') by the Ld. Additional Commissioner of Customs, Import Assessment, Custom House, Mundra, which was received by us only on 09<sup>th</sup> April 2024, the following proposals are made:

For Primacy Industries Private Limited

*[Signature]*  
Authorised Signatory

- Import of Glass items like Reed Diffusers, Thick Sham Cups etc to be classified under CTH 7013 and chargeable to BCD @ 20% and not under CTH 7010 as per BOEs cleared during the Period 2021-2022. Hence, the differential duty of Rs.7,05,046/- is demanded due to mis classification under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962
- Penalty under section 112 (a)(ii) and/or 114A of the Customs Act, 1962 to be imposed.

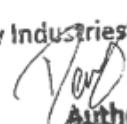
2. In light of the above proposal, the Noticee has been directed to show cause as to why the amount of Rs.7,05,046/- (consists of IGST Rs.4,68,454/- & SWS Rs.2,36,593/-) towards differential duty should not be recovered from the Noticee along with Interest and Penalty.

### **FACTS OF THE CASE:**

A1. The Noticee denies all the allegations made in the SCN for the detailed reasons given hereunder.

### **SUBMISSIONS**

B1. At the outset, the Noticee submits that they are manufacturers of Candle and exports the same to various countries based on the Global Customers requirement. For the ease of operations, the Noticee had taken EOU

For Primacy Industries Private Limited  
  
Authorised Signatory

Registration – No. LOP No.KASEZ/100%EOU/II/0:S/2011-12/12634Dt.:15.03.2012 whereby the imported items are cleared at NIL BCD and IGST & SWS is paid during importation. The Noticee had imported the following items from the International Suppliers.

- 1) White Frost Cambered Cup – 9 oz
- 2) Thick Sham Cup – 7 oz
- 3) Thick Sham Iris Cup – 6 oz & 14 oz
- 4) Reed diffuser colour bottle – 150 ml

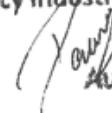
B2. During the period 2021-22, the Noticee have imported the above items having the assessable value of Rs.2,36,59,276/- covered under the various bills of entry as per annexure – 1. These consignments were cleared through customs, on arrival, after payment of appropriate duties.

B3. These items were used as an enclosure to candle, as required by our customers and the same is exported to various countries. The imported items are NOT tableware or kitchenware, but used as enclosure to candle. We are enclosing herewith the photos wherein this can be seen very clearly, as annexure -2.

B4. The Noticee further states that similar items were purchased from the local Indian market, from the following domestic suppliers, who are classifying these items under 7010.90.00 ONLY.

- M/s Hind Glass Industries, Firozabad
- M/s Haldyn Heinz Fine Glass P Ltd, Surat
- M/s Pragati Glass & Industries, Gujarat

For Primacy Industries Private Limited

  
Authorised Signatory

Sample invoice copies in respect of similar supplies received from the above suppliers are enclosed as annex - 3.

B5. The Tariff description of HSN 7010 is given below for kind reference:

*Carboys, bottles, flasks, jars, pots, phials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of the goods; preserving jars of glass; stoppers, lids and other closures, of glass.*

From the above, it can be seen that the imported items are used for the conveyance / enclosure to the candle. The imported goods are specific to volume, size and is used as enclosure to the candle. These are ordered for the commercial and specific purpose and not for Tableware or kitchenware.

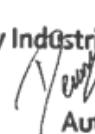
B6. The Tariff description of HSN 7013 is given below for kind reference:

*Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of hearing 7010 or 7018)*

The description of the goods falling under CTH 7013 shows that only glassware used as tableware or kitchenware fall under the said heading. Further, HSN Note of 7010 specifically states that the said heading covers all glass containers of the kind commonly used commercially for the conveyance or packing.

B7. In support of the above classification, we are enclosing herewith the order passed by the CESTAT Chennai in the case of Chendur Enterprises vs Commissioner of Customs, Tuticorin – reported in 2022 (381) ELT 82 (Tri.

For Primacy Industries Private Limited

  
Authorised Signatory

Chennai) wherein the Tribunal has clarified and distinguished between the glass containers for commercial purpose and the glass bottles for tableware or kitchenware. – Annex 4

### PRAYER

In view of the above submissions, it is respectfully prayed that the Ld. Additional Commissioner of Customs, Import Assessment, Custom House, Mundra, may be pleased to

- (a)Drop the proceedings initiated in the Show Cause Notice dated 18.03.2024 to the tune of Rs.7,05,046/-
- (b)Grant a personal hearing; and
- (c) Pass such other order or orders as may be deemed fit and proper in the facts and circumstances of the case

Date: 27.05.2024

For Primary Industries Private Limited

  
Signature of the Noticee

1. Thick sham cup –



2. 9 Oz. Cambered Cup

3. 150ml Reed diffuser bottle.





4. White Frost Cambered Cup



**13.2 2022 (381) E.L.T. 82 (Tri.-Mad) [04-02-2022] 2022 (381) E.L.T. 82 (Tri. - Chennai) IN THE CESTAT, SOUTH ZONAL BENCH, CHENNAI CHENDUR ENTERPRISES  
Versus  
COMMISSIONER OF CUSTOMS, TUTICORIN  
Final Order No. 40046/2022, dated 4-2-2022 in Appeal No. C/40039/2021**

*Customs: Glass bottles having specific measurement and used for packing*

*honey is classifiable under CTH 7010 90 00*

*Glass Bottles - Goods imported by appellant are glass bottles having specific measurement of 45 ml., 80 ml., 180 ml., 380 ml. and 730 ml. - Imported glass bottles are not tableware or kitchenware but used for packing honey - Classifiable under Tariff Item 7010 90 00 and not under Heading 7013 of Customs Tariff - Consequently, anti-dumping duty collected alleging classification of goods to be 7013, could not sustain. [paras 7, 11, 12]*

14.

### **3. Discussion and findings**

**14.1** I have carefully gone through the facts of the case, allegations made in the show because notice dated 01.12.2023, following the principles of natural justice as per the provisions of the Customs Act / Rules.

I find that following main issues are involved in the SCN, which are required to be decided-

- i.** Whether the goods having assessable value of ₹2,36,59,276/- (Rupees Two Crore Thirty-Six Lakh Fifty-Nine Thousand Two Hundred and Seventy-Six only) covered under Bills of Entry, as detailed in Annexure-A to the Notice, should be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- ii.** Whether the classification of the goods declared under CTH 70109000 in Bills of Entry mentioned in Annexure-A to the Notice, should be rejected and goods be re-classified under CTH 70139900 and reassessed accordingly at BCD rate @ 20% Adv;
- iii.** Whether the differential duty of ₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty-Six Only) in respect of Bills of Entry, as detailed in Annexure-A to the Notice, should be recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- iv.** Whether the penalty should be imposed upon them under Section 112(a)(ii) and/or 114A of the Customs Act, 1962.

**15.** I find that M/s. Primacy Industries Limited, Plot No. 314- 315, GIDC Industrial Area, Mithirohar, Taluka Gandhidham-370240 having IEC No. 0704014378 has filed Bills of Entry, for import of glassware items viz. Reed Diffusers, Thick Sham Cups, etc. The importer has classified the them under CTH 70109000 which attracts BCD@ 10% Adv. I further find that in response to the letter dated 20.01.2023 and subsequent reminder dated 27.03.2023 issued to the importer following has been replied that the glass imported by them is used as raw material for manufacturing of candle whereby said glass is an enclosure to candle. For reference, they have enclosed photograph of candle jar which is exported by them from their EOU unit (LOP No. KASEZ/100%EOU/1/08/2011-22/409 1/DT.22.07.2022).

**15.1** The importer has also submitted the copies of the photos of the goods imported by him i.e. Thick Sham Cup, Cambered Cup, Reed diffuser bottle and

White Frost Cambered Cup which clearly appear to be toiletries and tableware. With these available records I am going to discuss and decide the charges levelled against the importer, m/s Primacy Industries Ltd. one by one .

#### **16. Classification of the goods.**

**16.1** I find that the CTH 7010 provides for the following:

*CARBOYS, BOTTLES, FLASKS, JARS, POTS, PHIALS, AMPOULES AND OTHER CONTAINERS, OF GLASS, OF A KIND USED FOR THE CONVEYANCE OR PACKING OF GOODS; PRESERVING JARS OF GLASS; STOPPERS, LIDS AND OTHER CLOSURES, OF GLASS*

**16.2** I find that the CTH 7013 provides for the following:

*GLASSWARE OF A KIND USED FOR TABLE, KITCHEN, TOILET, OFFICE, INDOOR DECORATION OR SIMILAR PURPOSES (OTHER THAN THAT OF HEADING 7010 OR 7018)*

**16.3** I find that the images of the goods as submitted by the importer clearly show that the subject goods imported by M/s Primacy Industries Ltd. clearly appear to be toiletries and tableware kitchen ware. The thick sham cup and the White Frost Cambered Cup clearly appear to be table ware to be used as the decorative candle. Further, the Cambered Cup, and Reed diffuser bottle clearly appear to be for packing of make/ skin care// body care products that qualifies the same to be recognized as toiletries. Therefore, the goods imported by the M/s primacy industries Ltd. has misclassified the imported goods under CTH 7010 which are is correctly classifiable under CTH 7013 and the importer is liable to pay BCD at the rate of 20%.

#### **17. Confiscation under section 111(m) of the Customs Act, 1962**

**17.1** The section 111(m) of the Customs Act, 1962 provides for the following

**111(m)** 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](#) <sup>3</sup> [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of [section 54](#)];

**17.2** The SCN has proposed the confiscation of the goods having assessable value of ₹2,36,59,276/- (Rupees Two Crore Thirty-Six Lakh Fifty-Nine Thousand Two Hundred and Seventy-Six only) covered under Bills of Entry, as detailed in Annexure-A to the Notice, under Section 111(m) of the Customs Act, 1962 on the ground of the mis-classification under section 7010. Now, as the classification of the goods has been found to be mis classified for paying BCD @10% instead of that @20% under CTH 7013 as discussed at the para no. 16.3 above (not repeated here for the sake of brevity). It is clearly evident that the imported has willfully misdecalred the goods for clearance of goods on payment of less duty than the imported goods are prescribed for.

**17.3** Further, I find that the Importer was in complete knowledge of the correct nature classification of the goods nevertheless, the Importer

misclassified the goods so as to pay less duty and gain undue benefit. Subsequent, to the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith has been bestowed on the Importers/trade and the practice of routine assessment and concurrent audit etc. have been dispensed with. As a part of self-assessment by the Importer, the responsibility has been entrusted upon them to correctly self-assess the duty. However, in the instance case, the Importer intentionally abused this faith placed upon it 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 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 ₹2,36,59,276/- (Rupees Two Crore Thirty-Six Lakh Fifty-Nine Thousand Two Hundred and Seventy-Six only) as detailed in the annexure A to the Notice are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**17.4** I am inclined to impose redemption fine on them although the same are not available for confiscation. In this regard, I rely upon the judgements, as enumerated below:

i *Hon'ble Madras High Court in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) has after observing 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), held in para 23 of the judgment as below:*

*“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 regularised, 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 authorised by this Act ....”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 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 from Section 111 only. Hence, the payment of 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.*

*ii. 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.).*

*iii. Further, neither the decision 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.) nor the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) has been challenged by any of the parties and are in operation.*

**18. Recovery of differential duty under section 28(4) and interest under section 28AA of the Customs Act, 1962.**

**18.1** The section 28(4) & 28AA of the customs act, 1962 provides for the following:

**28(1).....**

.....

.....

**28(4)** *Where any duty has not been <sup>10</sup>[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

- (a) collusion; or*
- (b) any wilful mis-statement; or*
- (c) suppression of facts,*

*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been <sup>11</sup>[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.*

**18.2** The SCN has proposed recovery of the differential duty of Rs.7,05,046/- (Rupees Seven Lakh Five Thousand and Forty Six only) in respect of the in respect of Bills of Entry, as detailed in Annexure-A to this Notice, should be recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 based on the allegation that the goods imported have been mis-classified under section 7010. Now, as the classification of the goods has been found to be mis classified for paying BCD @10% instead of that @20% under CTH 7013 as discussed at the para no. 16.3 above (not repeated here for the sake of brevity). It is clearly evident that the imported has willfully misdecalred the goods for clearance of goods on payment of less duty than the imported goods are prescribed for. Further, I find that such wrong classification of the goods by the Importer has resulted into short levy of duty of Rs. ₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty-Six Only) in respect of Bills of Entry, as detailed in Annexure-A to this Notice, which is recoverable from the said Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act.

**19. Imposition of penalty under section 114A of the Custosm Act,1962**

**19.1** The section 114A of the Customs Act. 1962 provides for the following;

**114A** Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has <sup>2</sup> [\*\*\*\*] 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 <sup>3</sup> [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

**19.2** The SCN has proposed penalty under section 114A of the Customs Act, 1962 based on the allegation that the goods imported have been misclassified under section 7010. Further, I find that the Importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty. Now, as the classification of the goods has been found to be misclassified for paying BCD @10% instead of that @20% under CTH 7013 as discussed at the para no. 16.3 above (not repeated here for the sake of brevity). It is clearly evident that the imported has willfully misdecalred the goods for clearance of goods on payment of less duty than the imported goods are prescribed for. Which has resulted into short levy of duty of ₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty-Six Only) in respect of Bills of Entry, as detailed in Annexure-A to this Notice which is recoverable from the said Importer under the provisions of Section 28(4) of the Customs Act, 1962 along with interest as applicable under Section 28AA of the Act. For such act of omission and commission, the Importer has rendered himself liable to penalty under Section 114A of the Customs Act, 1962.

## **20. Imposition of Penalty under 112(a)(ii) of the Customs Act, 1962**

**20.1** The section 112(a)(ii) of the Customs Act, 1962 provides for the following:

### **SECTION 112. Penalty for improper importation of goods, etc.-**

**Any person, -**

(a) .....

(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) .....

(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:

**20.2** Now I decide the issue of penalty proposed under Section 112(a)(ii) of the Customs Act, 1962. I already decided that the fact that the goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 for the reasons explained under foregoing paras. Consequently, penalty under Section 114A is also found leivable on the Importer as the elements for penalty as per said Section 114A is pari materia with Section 28(4) of the Act. Further, fifth proviso to Section 114A provides that no penalty under Section

112(a) to be imposed if penalty under Section 114A is levied. Since I have already upheld the imposition of penalty under Section 114A, penalty under Section 112(a) (ii) is not liable to be imposed.

**Order**

**21.** In view of the above discussion and findings I pass following order:

- i.** I order for confiscation of the goods having assessable value of ₹2,36,59,276/- (Rupees Two Crore Thirty-Six Lakh Fifty-Nine Thousand Two Hundred and Seventy-Six only) covered under Bills of Entry, as detailed in Annexure-A to the Notice, under Section 111(m) of the Customs Act, 1962; However, I offer the same for redemption under Section 125 (1) of the Customs Act, 1962 upon payment of a fine of **Rs. 20,00,000/- (Rupees Twenty Lakhs only)**. Further, as per the provisions of Section 125(3) of the Customs Act, 1962 if option of payment of fine is not exercised within 120 days from the date of this order, the same shall become void.
- ii.** I order for rejection of the classification of the goods declared under CTH 70109000 in Bills of Entry mentioned in Annexure-A to the Notice, and order for the goods to be re-classified under CTH 70139900 and reassessed accordingly at BCD rate @ 20% Adv;
- iii.** I confirm and order for recovery of the differential duty of **₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty-Six Only)** in respect of Bills of Entry, as detailed in Annexure-A to the Notice, under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962.
- iv.** I impose the penalty of **₹7,05,046/- (Rupees Seven Lakh Five Thousand and Forty-Six Only)** upon the importer M/s Primacy Industries Ltd. under Section 114A of the Customs Act, 1962. However, as per first proviso to Section 114A of the Customs Act, 1962 if they pay the amount of duty determined above along with interest payable thereon as ordered under (iii) above within thirty days from the date of communication of this order, the amount of penalty shall be twenty-five percent of the duty confirmed above. The benefit of reduced penalty shall be available if the amount of reduced penalty is also paid within the aforesaid period of thirty days.
- v.** I refrain from imposing the penalty upon the importer M/s Primacy Industries Ltd. under Section 112(a)(ii) of the Customs Act, 1962.

**22.** The SCN No. CUS/APR/33/2023/Gr-3O/oPr Commr-Cus-Mundra dt. 18.03.2024 stands disposed of on above terms.

अमित कुमार मिश्रा  
अपर आयुक्त, सीमा शुल्क,  
सीमा शुल्क भवन, मुन्द्रा

सेवा में,  
M/s primacy Industries Ltd.  
Plot No. 314-315, GIDC Industrial Aera,  
Mithirohar, Taluka Gandhidham GJ-370240

प्रति/Copy to,

1. The Dy./Asstt. Commissioner (Gr.3), Custom House, Mundra.
2. The Dy./Asstt. Commissioner (Legal/Prosecution), Custom House, Mundra.
3. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.
4. The Dy./Asstt. Commissioner (EDI), Custom House, Mundra.
5. Notice Board (to display on Notice Board for all Noticees).
6. Guard File.