

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A	FILE NO. फाइल संख्या	GEN/ADJ/ADC/1757/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO. आदेश संख्या	MCH/ADC/AKM/271/2024-25
C	PASSED BY जारीकर्ता	Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।
D	DATE OF ORDER आदेश की तारीख	28.01.2025
E	DATE OF ISSUE जारी करने की तिथि	28.01.2025
F	SCN No. & Date कारण बताओ नोटिस क्रमांक	CUS/APR/MISC/6748/2024-GR-2-O/o Pr. Commr-Cus-Mundra Dated 09.08.2023
G	NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	M/s. Nextera Management Services (IEC: 0312008538)
H	DIN/दस्तावेज पहचान संख्या	20250171MO0000666D42

1. यह आदेश संबंधित 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 पर अपील कर सकता है-

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:

“सीमाशुल्क आयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH 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 सं०-6 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।
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.

BRIEF FACTS OF THE CASE

M/s. Nextera Management Services, 82, Floor-6, 179, Commercial Chamber, Masjid Bunder, Mandvi, Mumbai-400003, having IEC Code No. 0312008538 (hereinafter referred to as the importer) is engaged in the importing of 'Sodium Saccharine'. The said importer has filed Bills of Entry No. 9995679 on 13.08.2024 for import of 'Sodium Saccharine', classifying the same under Customs Tariff Heading 29251100 of Custom Tariff Act, 1975 (hereinafter referred to as "the imported goods"). The goods were imported from China and supplied by M/s. A.H.A International Co. Ltd (China). The importer had cleared the said imported goods without payment of applicable Counter Vailing Duty.

2. "Saccharin in all its forms" (hereinafter referred to as the subject goods) falling under tariff item 29251100 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in or exported from, People's Republic of China (hereinafter referred to as the subject countries), and imported into India attract CVD at the rates of 20% on CIF Value of the goods ("CIF value" means the assessable value as determined under section 14 of the Customs Act, 1962 (52 of 1962) as per the CVD notification No. No. 02/2019 dated 30.08.2019.

3. An investigation had been initiated by SIIB, Customs House, Cochin in respect of imports of 'Sodium Saccharine from China by M/s. Nextera Management Services for non-payment of CVD imposed vide notification No. No. 02/2019 dated 30.08.2019, and the same was informed to the assessment group, Customs House Mundra on dated 19.07.2024. vide the said letter SIIB, Customs House, Cochin had informed that the importer had cited that CVD was not levied in imports of Sodium Saccharine from China through Mundra Port vide Bill of Entry No. 9995679 on 13.08.2024. On analysis of data related to Bill of Entry No. 9995679 on 13.08.2024 revealed that the Importer had cleared the goods "Sodium Saccharine", falling under CTH 29251100 originating in or exported from China attract CVD at the rates of 20% on CIF Value of the goods ("CIF value" means the assessable value as determined under section 14 of the Customs Act, 1962 (52 of 1962), as per the CVD notification No. No. 02/2019 dated 30.08.2019 and had not paid appropriate Countervailing Duty (CVD) on the said imported goods. In the instant case, the Countervailing Duty was payable on the said imported goods as per aforesaid CVD Notification No.02/2019(CVD) dated 30.08.2019, however, the importer had cleared the said imported goods without payment of applicable Countervailing Duty. Details of items against which applicable CVD has not been paid is detailed below: -

TABLE-A

Bill of Entry No./date	Description of goods	CTH	Assessable Value	CVD@20%on (CIF/ assessable value) in RS	IGST @18%	Differential duty in Rs
9995679/ 13.08.2022	Sodium Saccharine	2925 1100	1,22,19,900/-	24,43,980/-	4,39,916/-	28,83,896/-

4. Vide Personal Hearing cum Consultative Letter/demand notice dated 02.08.2024, the importer was asked to appear before Additional Commissioner of Customs at their office on 08.08.2024 and in terms of the Board's instruction issued vide F. No. F/390/Misc/3/2019-JC dated 27.04.2020, a facility of virtual personal hearing is also availed to them. However, neither importer nor their representative present on 08.08.2024 also they do not reply against the said PH.

5. After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption notification, applicable duties, rate of duties and its relevant notifications etc. in respect of said imported goods and pay the appropriate duty accordingly, whereas, in the instant case, the importer had failed to declare the applicability of countervailing duty, the relevant CVD notification No.02/2019 (CVD) dated 30.08.2019.

6. From the above fact, it can be seen that the importer had not declared the applicability of countervailing duty, the relevant CVD notification No.02/2019 (CVD) dated 30.08.2019 in the Bill of Entry of the said imported goods and thereby they had not paid the appropriate countervailing duty on said imported goods. Further after

pointing out/communicating on 02.08.2024, they have not paid appropriate countervailing duty on the said imported goods. Therefore, extended period is invokable under the provisions of Section 28(1) of the Customs Act 1962 for demand of countervailing duty not paid in the instant case. The details of required duty to be paid in respect of said imported goods is detailed in Table-A above. Thus, countervailing duty @ 20% on CIF value (Assessable Value) of Rs. 24,43,980/- and the applicable IGST Rs. 4,39,916/- @ 18% on CVD total differential duty calculated as Rs. 28,83,896/- on the said imported goods cleared under Bills of Entry mentioned in Table-A is appeared to be demanded under Section 28(1) of the Customs Act, 1962, along with appropriate interest under Section 28AA of the Customs Act, 1962. Also, the goods valued at Rs. 1,22,19,900/- imported under above-mentioned Bills of Entry appeared to be liable for confiscation under the provision of Section 111(m) of the Customs Act, 1962 in as much as the same had imported by mis-declaring the goods without mentioning CVD Notification no.02/2019 (CVD) dated 30.08.2019. Therefore, the Importer appeared to be liable for penalty under Section 112(a) and / or 114A of the Customs Act, 1962.

7. Accordingly, the Importer **M/s. Nextera Management Services** was called upon to show cause as to why:

- i. The imported goods having declared assessable value of Rs. 1,22,19,900/- (Rupees One Crore Twenty Two Lakh Nineteen Thousand and Nine Hundred only) as detailed in Table-A should not be held liable for confiscation under Section 111(m) of the Customs Act 1962;
- ii. The countervailing duty amounting to Rs. 24,43,980/- and the applicable IGST Rs. 4,39,916/- @ 18% on CVD = Total of Rs. 28,83,896/- (Rupees Twenty Eight Lakh Eighty Three Thousand Eight Hundred and Ninety Six only) as detailed in Table-A to the SCN, leviable on the said imported goods "Sodium Saccharine" should not be demanded and recovered from them under Section 28(1) of the Customs Act, 1962.
- iii. Interest as applicable should not be recovered from them on the Customs duty mentioned at (b) under Section 28AA of the Customs Act, 1962.
- iv. Penalty should not be imposed upon them under the provisions of Section 112(a) and / or 114A of the Customs Act, 1962.

8. DEFENCE SUBMISSIONS: M/s. Nextera Management Services had submitted their written submissions on 02.12.2024 wherein the Noticee interalia stated that they have also received another Show Cause Notice on the similar issue bearing F. No. GEN/ADJ/COMM/150/2023-Adjn-O/o Pr Commr-Cus-Mundra dated 07.08.2024. They submitted that demand of differential duty amounting to Rs. 24,43,980/- in respect of Bill of entry No. 9995679 dated 13.08.2022 was also included in the above mentioned SCN dated 07.08.2024. The proposed demand made in the SCN dated 09.08.2024 (issued by ADC, Customs House, Mundra) is already covered in the

erstwhile Show Cause Notice dated 07-08-2024 and for ready reference copy of both SCN submitted by the Noticee.

9. RECORDS OF PERSONAL HEARINGS

- Following the principles of natural justice personal hearing in the subject matter was granted to all the Importer on 09.12.2024. In response to the same, the importer submitted their written submissions vide letter dated 02.12.2024.

DISCUSSION AND FINDINGS

10. I have gone through the facts of the case, Show Cause Notice dated 09.08.2024 and written submissions both, in written and in person. I find that the Noticee, in both written submissions and during the personal hearing, has presented strong arguments, asserting that the demand should be dropped based on the fact that the department has already raised a demand through a different Show Cause Notice on the same issue. In light of this, I am inclined to address and decide this matter without delving into the specifics of the current case, such as confiscation, fine, penalty, etc.

11. I notice that Importer M/s. Nextera Management Services bring out the fact through their written submissions dated 02-12-2024 before the adjudicating authority that Bill of Entry No. 9995679/13.08.2022 covered under the present show cause notice dated 09.08.2024 had already been covered under a different show cause notice No. GEN/ADJ/COMM/150/2023-Adjn-O/o Pr Commr-Cus-Mundra dated 07.08.2024 which was issued on the same issue. The aforementioned fact has been thoroughly examined, and I find thate:

- (i)** Show Cause Notice No. GEN/ADJ/COMM/150/2023-Adjn-O/o Pr Commr-Cus-Mundra dated 07.08.2024 was issued on the same issue wherein the differential duty was demanded against multiple Bills of Entry under Section 28(4) of the Customs Act, 1962 from the Importer M/s. Nextera Management Services.
- (ii)** On perusal of the Show Cause Notice dated 07.08.2024 alognwith its Annexures, I noticed that Bills of Entry No. 9995679/13.08.2022 is mentioned under Table-A to the SCN dated 07.08.2024 issued by the Principal Commissioner of Customs, Mundra. The said Show Cause Notice is still pending for adjudication.

From the above, it may be seen that duty involved in present show cause notice dated 09.08.2024 has already been demanded through the different show cause notice dated 07.08.2024 by the department. The Bill of Entry No. 9995679/13.08.2022 against which duty has been demanded in the present SCN is found to be mentioned at sr. 1 of TABLE-A to the Show Cause Notice dated 07.08.2024 issued by the Principal Commissioner of Customs, Mundra.

12. I also noticed that a letter dated 24.12.2024 has been received from Assessment Group-2 wherein it has been mentioned that BE No. 9995679/13.08.2022 covered under the present Show Cause Notice issued by Addl. Commissioner of Customs

(Group-2), Mundra has already been covered in the SCN dated 07.08.2024 issued by the Principal Commissioner of Customs, Mundra. Corrigendum to the Show Cause Notice dated

13. Considering the aforementioned facts, I find it appropriate to conclude that the demand raised in this case should be dismissed, and the current Show Cause Notice should be withdrawn. Furthermore, since the issue has already been under adjudication with the higher authority, there is no need to discuss the facts of the case. Therefore, I affirm this position and do not see any purpose in further discussing the details of the present case.

14. In view of discussion and findings supra, I pass the following order:

ORDER

- I order to drop/withdraw the proceedings initiated vide Show Cause Notice No. CUS/APR/MISC/6748/2024-GR-2-O/o Pr. Commr-Cus-Mundra dated 09.08.2023; considering that matter is already under adjudication with the higher authority.

15. This OIO 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.

अपर आयुक्त सीमा शुल्क,
(अधिनिर्णयन अनुभाग)
कस्टम हाउस, मुंद्रा।

फ़ाइल संख्या: GEN/ADJ/ADC/1757/2024-Adjn

DIN/दस्तावेज़ पहचान संख्या: 20250171MO0000666D42

By RPAD/ By Hand Delivery/Email/Speed Post

To,
M/s Nextera Management Services,
6/82, Commercial Chambers,
179, Yusuf Meherali Road,
Masjid Bunder (W), Mumbai 400003.
(Email: bhuta08@gmail.com)

Copy to:

1. The Dy./Asstt. Commissioner (RRA/TRC), Customs House, Mundra.

2. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra.
3. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
4. The Dy./Asstt. Commissioner, Group-2, Customs House, Mundra
5. Guard File