ar	**प्रधान आयुक्त का कार्यालय,सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421** **OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ** **MUNDRA, KUTCH-GUJARAT** **Email: group2-mundra@gov.in**	आज़ादी का अमृत महोत्सव

A	**FILE NO./**फ़ाइल संख्या	GEN/ADJ/ADC/1179/2025-Adjn
B	**OIO NO./**आदेश संख्या	MCH/ADC/ZDC/105/2026-27
C	**PASSED BY/**जारीकर्ता	Dipak Zala, ADDITIONAL COMMISSIONER, Customs House, Mundra.
D	**DATE OF ORDER/**आदेश की तारीख	21.05.2026
E	**DATE OF ISSUE/**जारी करने की तिथि	21.05.2026
F	**SCN No. & Date/**कारण बताओ नोटिस क्रमांक	SCN NO. CUS/APR/MISC/4846/2024-Gr-2 dated 30.05.2024
G	**NOTICEE/ PARTY/ IMPORTER** नोटिसकर्ता/पार्टी/आयातक	M/s Pearl Enterprise [India] (IEC-0814009816), 803, N.H. NO.8, Himatnagar Chiloda Highway, Chiloda, Dist.-Gandhinagar, Gujarat-382355.
H	**DIN/**दस्तावेज़ पहचान संख्या	20260571MO0000614135

1. यहआदेश संबन्धित को नि:शुल्क 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 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,

NAVRANGPURA, AHMEDABAD-380 009."

3. उक्तअपील यहआदेश 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 ड्यूटि/ 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 Pearl Enterprise [India] (IEC-0814009816), 803, N.H. NO.8, Himatnagar Chiloda Highway, Chiloda, Dist.-Gandhinagar, Gujarat-382355 (hereinafter also referred to as "the importer/the Noticee" for the sake of brevity") presented following Bill of Entry having details mentioned below, through their appointed Customs Broker M/s. Anita Logistics at Custom House, Mundra, for clearance of imported goods declared as "Calcium Nitrate Granular (3240 Bags", classifying the same under Tariff item 31026000 of first schedule of the Customs Tariff Act, 1975.

TABLE-A

Sl. No.	B/E No. & Date	Item Description	Quantity (in Kgs)	Assessable Value (INR)	Duty (in INR) @ 10.775%
1.	9471700/ 06.11.2020	Calcium Nitrate Granular (3240 Bags)	81000	13,08,737	1,41,017/-

2. During the course of Audit conducted by the Customs Receipts Auditors of office of the Principal Director of Audit (Central), Audit Bhavan, Ahmedabad for the period from October, 2020 to March, 2021, the Senior Audit Officer/CRA vide LAR No. 26/2021-22, observed that this Bill of Entry was self-assessed by the importer wherein the benefit availed under Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated 30.06.2017 of concessional rate of Basic Customs duty @ 5% was availed by them. The entry 225(1) (b) of Notification No.50/2017-Cus dated 30.06.2017 is read as under: -

TABLE-B

Sr. No.	**Chapter or Heading or sub heading or tariff item**	**Description of goods**	**Standard rate**
225	31	The following Water-Soluble Fertilizers included in Schedule 1, Part A of the Fertilizers Control Order, namely: (b) Calcium nitrate	5%

3. Under the impugned Bill of Entry, the importer imported **"Calcium Nitrate Granular (3240 BAGS)"** and availed the benefit of concessional rate of duty under the above said notification which is available only to Calcium Nitrate. The declared description suggests that the impugned imported goods were different from 'Calcium Nitrate'. Thus, it appeared that in the subject Bill of Entry, the importer has wrongly availed the exemption under Sr.No.225 (1) (b) of Notification No.50/2017-Cus dated 30.06.2017 for imported goods whereas only Calcium Nitrate is covered under the said

notification. Therefore, it appeared that in the impugned Bill of Entry Basic Customs duty was liable to be charged at the prevailing tariff rate i.e. 7.5% instead of 5% as claimed.

Computation of Differential Duty: -

4. Benefit of concessional rate of Basic customs duty @ 5% is allowed to Calcium Nitrate only vide Sr. No. 225 (1) (b) of Customs Notification No.50/2017-, otherwise, goods classifiable under Customs Tariff Head 31026000 attracts Basic Customs Duty @ 7.5%. In the instant case the importer has imported "**Calcium Nitrate Granular (3240 BAGS)**" and wrongly availed the benefit of Sr. No. 225 (1) (b) of Notification No.50/2017-Customs which was allowed only to "Calcium Nitrate" only. Therefore, the importer is liable to pay differential Customs duty of **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** as per calculation mentioned below-

TABLE-C

Sl. No.	B/E No. & Date	Item Description	Quantity (in Kgs)	Assessable Value (INR)	Duty (in INR) @ 10.775%	Duty leviable (in INR) @ 13.663%	Short levy duty (in INR)
1.	9471700 / 06.11.2020	Calcium Nitrate Granular (3240 Bags)	81000	13,08,737/-	1,41,017/-	1,78,813/-	37,796/-

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

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

B The Customs Tariff.

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

"(i) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed".

D. Section 28 (4) of the Customs Act, 1962 provides that *"Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of-*

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short- paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice".

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

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

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

114A - *Penalty for short-levy or non-levy of duty in certain cases Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

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

6. The importer/noticee has willfully mis-stated the facts & wrongly availed the Customs duty exemption benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated 30.06.2017 by paying BCD at lower rate i.e. @ 5% instead of correct rate of BCD @ 7.5% as per Customs Tariff.

7. In the light of the documentary evidences, as brought out above and the legal position, it appears that the importer availed inadmissible exemption benefits in respect of the goods.

8. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer/auditee claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty exemption benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017-Cus dated 30.06.2017 by paying BCD at lower i.e. @ 5% instead of correct rate of BCD @ 7.5%. 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, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instant case, the importer intentionally not paid correctly the customs duties on the imported goods. Therefore, it appears that the importer has willfully 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 willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act. Therefore, the goods having assessable value of **Rs. 13,08,737/-**as detailed in above table, appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

9. Therefore, it appears that the importer wilfully claimed undue notification benefit for the impugned goods resulting into short levy of duty. Further, it appears that in respect of the Bill of Entry as mentioned in above table, such wrong claim of notification benefit on the part of the importer has resulted in short levy of duty of **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** in respect of the subject Bill of Entry, which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 (hereinafter referred to as 'the Act) along with interest as applicable under Section 28AA of the Act. By the said deliberate wrong claim of notification benefit, the importer also appears to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

10. Accordingly, Show Cause Notice dated 30.05.2024 was issued to M/s. Pearl Enterprise (India)(IEC: 0814009816) wherein they were called upon to show cause to the Additional Commissioner of Customs, as to why: -

i. The goods imported vide Bill of Entry as detailed in above table, should not be re-assessed at correct rate of BCD i.e. @ 7.5% and consequently benefit of Sr. No. 225 (1) (b) of Notification no. 50/2017- Cus dated-30.06.2017 should not be denied to the above said goods;

ii. The goods having assessable value of **Rs. 13,08,737/-** covered under Bill of Entry as detailed in above table, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;

iii. The differential duty worked out as short levy amounting to **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** for subject Bill of Entry as detailed in above table, should not be recovered from the importer under Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable

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

11. The Competent Authority, in terms of the first proviso to Section 28(9) of the Customs Act, 1962, has extended the statutory period prescribed for adjudication of the aforesaid Show Cause Notice by a further period of one year. The same was intimated to the importer vide letter dated 30.05.2025.

Record of Personal Hearing

12. In compliance with the principle of natural justice “Audi alteram partem”, opportunities of personal hearing were granted to the noticee on 02.09.2025, 17.09.2025 and 30.03.2026. The noticee submitted their written submission, received on 08.11.2024 vide letter, wherein they stated that Calcium Nitrate and Calcium Nitrate Granular (3240 Bags) are the same product. The term “granular” and “3240 Bags” indicate the physical form of the product and the number of packages of the total quantity imported (3240 Bags × 25 kg = 81,000 Kgs). They also attached NOC for sale fertilizers in Part A of Schedule-I of FCO, 1985 issued by the Directorate of Agriculture.

DISCUSSION AND FINDINGS

13. I have carefully gone through the facts of the case, SCN and records of

the case. The principles of natural justice have been complied with by granting adequate opportunities to the noticee to present their defence. Now, I proceed to examine the issues involved in the present case in light of available records, statutory provisions and judicial precedents. On careful perusal of the Show Cause Notice, I find that the following issues arise for determination in this adjudication:

(i) Whether benefit of Sr. No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017 availed by the importer is liable to be rejected;

(ii) Whether the differential duty worked out as short levy amounting to **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** demanded under SCN is recoverable form the noticee in terms of Section 28 (4) of the Customs Act, 1962 along with the interest thereon as per Section 28AA of the Customs Act, 1962, as applicable;

(iii) Whether the imported goods are liable for confiscation under section 111(m) of the Customs Act, 1962 or otherwise;

(iv) Whether acts of the importer attract penal action as proposed under Section 114A of the Customs Act, 1962.

14. After having identified and framed the main issues to be decided, I now proceed to deal with each of the issues individually for analysis in light of facts, submissions, circumstances of the case, provisions of the Customs Act, 1962 and nuances of various judicial pronouncements.

15. Regarding the first issue, I find that the importer filed Bill of Entry no. 9471700 dated 06.11.2020 for clearance of "Calcium Nitrate Granular (3240 BAGS)" under CTH 31026000 and the benefit of Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated 30.06.2017 of concessional rate of Basic Customs duty @ 5% was availed by them.

15.1 I find that during the course of Audit for the period from October, 2020 to March, 2021, the Senior Audit Officer/CRA vide LAR No. 26/2021-22, observed that the said Bill of Entry was self-assessed by the importer wherein benefit provided at Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated 30.06.2017 of concessional rate of Basic Customs duty @ 5% was availed by them.

15.2 I observed that benefit of Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated 30.06.2017 reads as under: -

Sr. No.	**Chapter or Heading or sub heading or tariff item**	**Description of goods**	**Standard rate**
225	31	The following Water-Soluble Fertilizers included in Schedule 1, Part A of the Fertilizers Control Order, namely: (b) **Calcium nitrate**	5%

The importer imported goods declared as "Calcium Nitrate Granular (3240 BAGS)" and availed the benefit of concessional rate of duty under the aforesaid notification, which is admissible only in respect of "Calcium Nitrate". The declared description of the imported goods indicates that the impugned goods are distinct from "Calcium Nitrate".

Accordingly, it is established that the importer had incorrectly availed the benefit of exemption under Sr. No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017, as the said entry covers only "Calcium Nitrate". Therefore, it is noted that the goods imported under the subject Bill of Entry were not eligible for the concessional rate of Basic Customs Duty at 5% as claimed by the importer, and were instead liable to Basic Customs Duty at the applicable tariff rate of 7.5%. In view of the above facts, I hold that the benefit of Sr. No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017 for the subject bill of entry is not admissible.

16. Regarding the second issue, I noticed that importer had wrongly claimed the benefit of Sr. No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017 which is only meant for "Calcium Nitrate". These acts of importer are in contravention of various provisions of the Customs Act and the Rules made thereunder, with an intent to evade Customs Duty of **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** Hence, the provisions of Section 28(4) of the Customs Act, 1962 for invoking the extended period for demand of duty is rightly invokable in the instant case. Therefore, the differential duty amounting to **Rs. 37,796/-** as demanded under SCN is recoverable from the Noticee in terms of 28(4) of the Customs Act, 1962. Further, I find that interest on delayed payment of duty which accrues automatically once demand of duty is confirmed is also recoverable from the importer under the provisions of Section 28AA of the Customs Act, 1962. For this, I rely on the decision of the **Hon'ble Apex Court in the case of CCE Pune Vs SKF India Ltd. [2009(239) E.L.T. (385) (S.C.)**.

17. Regarding the third issue, as per my detailed findings in above para, importer wrongly claimed benefit of Sr. No. 225(1)(b) of Notification No.

50/2017-Cus dated 30.06.2017 which is only meant for "Calcium Nitrate" and thereby evaded Customs Duty amounting to **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only).**

17.1 I also find that it is a fact that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011; 'Self-Assessment' has been introduced in Customs. Section 17 of the Customs Act, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in the electronic form. Provisions of the Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make proper & correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962) the Bill of Entry shall be deemed to have been filed and after self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

17.2 From the above, I find that the Noticee has violated Sub-Section (4) and 4(A) of Section 46 of the Customs Act as they have wrongly claimed exemption of Sr. No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017 and evaded the payment of applicable duty. I find that the Noticee was required to comply with Section 46 which mandates that the importer filing the Bill of Entry must make true and correct declarations and ensure the following:

(i) Accuracy and completeness of the information declared;
(ii) The authenticity and validity of any document supporting the information provided; and
(iii) Comply with restrictions or prohibitions relating to the goods under this Act or any law in force at the time being in force.

17.3 I find that the Show Cause Notice propose confiscation of goods under the provisions of Section 111 (m) of the Customs Act, 1962. Provisions of Section 111 (m) of the Customs Act, 1962 is reproduced herein below:

"any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation."

In the instant case, the importer has wrongly claimed benefit of Sr. No. 225(1)(b) of Notification No. 50/2017-Cus dated 30.06.2017 which is only meant for "Calcium Nitrate" and hence, contravened the provisions of Section 46 of the Customs Act, 1962. These acts of omission and commission on the part of the importer rendered the goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

REDEMPTION FINE: -

17.4 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of Customs. Therefore, physical confiscation of the goods is not feasible. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, the issue has already been settled by the Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)].

Para 23 of the said Judgment is as follows:

" 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."

17.5 I further find that 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.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgments, I conclude that in the present case, the redemption fine in lieu of confiscation of the goods under Section 125 of the Customs Act, 1962 is required to be imposed.

18. Regarding the issue of penalty, I find that the SCN proposes penalty on the noticee under Section 114A of the Customs Act, 1962. Provisions of Section 114A of the Customs Act, is reproduced herein below: -

"SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases. – Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has 2 [****]been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:
[Provided that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall

be twenty-five per cent of the duty or interest, as the case may be, so determined:

18.1 Penalty under Section 114A can be imposed in cases where the duty has not been levied or has been short-levied by reason of collusion or any wilful mis-statement or suppression of facts. I find on the basis of the evidence and above discussions that the importer in the present case has wilfully wrongly availed the benefit of notification no. 50/2017-Cus dated 30.06.2017, whereas they were fully aware of the facts; for such act and omissions, I hold the importer liable to penalty under Section 114A of the Customs Act, 1962.

19. In view of the above facts of the case and findings on record, I pass the following order: -

(i) I order to reject the benefit of concessional rate of BCD under Sr.No.225 (I) (b) of Notification No.50/2017-Cus dated 30.06.2017 on the impugned goods under bill of entry no. 9471700 dated 06.11.2020, and order to re-assess the said Bill of Entry accordingly.

(ii) I hold that the impugned goods having assessable value of **Rs. 13,08,737/-** are liable for confiscation under Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs. 13,000/- (Rupees Thirteen Thousand only)** Under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iii) I confirm the demand of differential duty amounting to **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** under Section 28(4) of the Customs Act, 1962 and order to recover the same from the importer along-with applicable interest in terms of Section 28AA of the Customs Act, 1962.

(iv) I impose penalty of **Rs. 37,796/- (Rupees Thirty-Seven Thousand Seven Hundred and Ninety-Six Only)** on M/s. Pearl Enterprise (India) under Section 114A of the Customs Act, 1962. However, in case the importer pays the duty along with interest within 30 days of the communication of the order, the amount of penalty payable shall be twenty-five percent of the duty, as per proviso of Section 114A of the Customs Act, 1962.

20. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under 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.

21. The Show Cause Notice No. CUS/APR/MISC/4846/2024-Gr-2 dated 30.05.2024 stands disposed in above terms.

Digitally signed by Dipakbhai Zala
Date: 21-05-2026 18:09:02

Dipak Zala,
Additional Commissioner,
Custom House, Mundra.

By Speed Post/Regd. Post/E-mail/Hand Delivery

To,

M/s. Pearl Enterprise [India],
803, N.H. NO.8, Himatnagar Chiloda Highway,
Chiloda, Dist.-Gandhinagar, Gujarat-382355.

Copy to:

1. The DC/AC, RRA/Audit/TRC/EDI, Mundra Customs.
2. Notice Board/Guard file/Office Copy.