



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल 4th Floor, हड्को भवन HUDCO Bhawan, ईश्वर भुवन रोड Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad - 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN - 20250671MN000000B4E5

क	फाइल संख्या FILE NO.	S/49-98/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP- 054 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	02.06.2025
ड	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/AK/50/2024-25 dated 31.05.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	02.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Wellpack Industries Sr. No. 191, Pl, Plot No. - 1, Opp. R.K. Industrial Zone-11, Kuvadava, Wankaner Road, Sanosara, Rajkot, Gujarat-360003



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुभार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां। यदि शुल्क, मांगा गया व्याज, लगाया गया दंड की राशि और रूपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table border="0"> <tr> <td style="vertical-align: top;">सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td> <td style="vertical-align: top;">Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td> </tr> <tr> <td style="vertical-align: top;">दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td> <td style="vertical-align: top;">2nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td> </tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंजिल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	<p>सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-</p> <p>Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -</p> <p>(क) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रुपए.</p> <p>(a) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;</p> <p>(ख) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार रुपए</p> <p>(b) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;</p> <p>(ग) अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रुपए.</p> <p>(c) where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees</p> <p>(घ) इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।</p> <p>(d) An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.</p>				
6.	<p>उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.</p> <p>Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-</p> <p>(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or</p> <p>(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.</p>				



ORDER-IN-APPEAL

M/s Wellpack Industries, (IEC No. AADFW6662P), Sr. No. 191, PI, Plot No. - 1, Opp. R.K. Industrial Zone-11, Kuvadava, Wankaner Road, Sanosara, Rajkot, Gujarat-360003 (hereinafter referred to as the 'Appellant') has filed the present appeal in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/50/2024-25 dated 31.05.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Custom House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed Bill of Entry No. 3067699 dated 17.04.2024 through their Customs Broker M/s. Accurate Cargo Clearing Pvt Ltd. (hereinafter referred to as 'the CB') at Mundra Port for import of Net Weight of 25340 kgs of goods declared as "Coil Nail Welding Wire" of various types (hereinafter referred to as 'the impugned goods') having assessable value of Rs. 23,63,953/- under CTH-74081920 from China.

2.1 The said Bill of Entry was pushed to PAG by FAG citing the reason: "Please refer to the Departmental Queries and their Replies. From the uploaded documents, it appeared that the goods under import are MS Wire with Copper Coated and appears to be properly classified under CTH 721730. The goods under subject chapter heading also require BIS certificate or one time BIS Exemption certificate from the Ministry of Steel in terms of Steel and Steel Products (Quality Control) Order, 2024.". Accordingly, the Bill of Entry was forwarded for First Check examination with direction to conduct PMI Testing for ascertaining chemical composition. As per PMI Testing, Composition of goods has been observed as Sample 1 (Fe-88.46, Cu-7.82, Ni-3.14, Si-0.25, Mn-0.22, S- 0.10, Cr-0.01), Sample 2 (Fe-88.32, Cu-8.08, Ni-3.00, Si-0.17, Mn-0.23, S- 0.11, Cr-0.09) and Sample 3 (Fe-88.48, Cu-8.09, Ni-2.79, Si-0.33, Mn- 0.26, S-0.04, Cr-0.01). From the examination report, it appeared that the imported goods were basically made of Mild Steel Wire. As per the Chapter Notes, Chapter 74 covers:

- i. refined copper having at least 97.5% by weight of copper,
- ii. copper alloys in which copper predominates by weight over each of the other elements and
- iii. master alloys containing more than 10% by weight of copper.

However, as per PMI Testing, the copper contents in the imported goods are 7.82%-8.09% and are not predominating, therefore, the imported goods appeared to be mis-

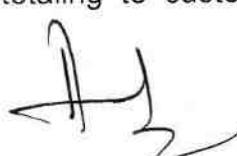


classified under CTH 74081920.

2.2 Further, from the explanatory notes of Heading 7217 it appeared that heading 7217 primarily focuses on wire made of iron or non-alloy steel, including those that are plated or coated with various materials, however, heading 8311 includes a broader range of materials such as base metal or metal carbides, which are specifically designed for welding, soldering, brazing, or metal deposition. Heading 8311 covers not only wires but also rods, tubes, plates, electrodes, and similar products. Further, the classification under heading 7217 is based on the material of the wire without specific consideration of its use in welding. The wire could be used for other industrial purposes. However, heading 8311 is specifically for products used in welding and related processes. The subheadings under heading 8311 further distinguish between different types of welding and soldering products, such as coated electrodes and cored wire. Heading 8311 is more specialized and takes into account the specific purpose of the product. For general iron or non-alloy steel wire, heading 7217 may be applicable. However, for specialized welding products, heading 8311 is more appropriate due to its specific coverage of welding materials. The specificity of this heading makes it the appropriate classification for products designed for welding applications. The Harmonized System Nomenclature (HSN) explanatory notes clarify that heading 8311 includes not only coated electrodes and cored wires but also other products explicitly manufactured for welding and related processes. This includes welding rods, tubes, plates, and similar items that are designed to deposit metal during the welding process. Therefore, it appeared that the imported goods viz. Coil Nail Welding Wire are classifiable under heading 8311. Further, as the goods are specifically usable for purpose of welding by flame, the goods appeared appropriately classifiable under CTH 83113010.

2.3 Further, as per Circular dated 20.10.2023 issued by Ministry of Steel, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification. Further, vide CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is further clarified that mandatory clarification is required only for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel. Accordingly, as CTH 831 13010 is not mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory BIS Registration was not required in the instant case for clearance of the said goods.

2.4 The appellant declared the imported goods under CTH 74081920 which attracts 5% BCD, 10% SWS and 18% IGST totaling to customs duty @ 24.490%.



whereas, it appeared that the imported goods are appropriately classifiable under heading 83113010 which attracts 10% BCD, 10% SWS and 18% IGST totaling to Customs duty @ 30.980%. Accordingly, the Customs duty declared by the appellant was 5,78,933/-, however, the correct Customs duty leviable on the appellant goods was Rs. 7,32,353/-. Therefore, the differential duty evaded is worked out to Rs. 1,53,420/-.

2.5 In view of the same, it appeared that the due to the mis-classification of the imported goods by the appellant under CTH 74081920 instead of correct CTH 83113010 in order to evade differential customs duty to the tune of Rs. 1,53,420/-, the imported goods having assessable value of Rs. 23,63,953/- appeared liable for confiscation under Section 111(m) of the Customs Act, 1962 and for the act of mis-classification, the appellant appeared liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

2.6 The appellant vide letter dated 21.05.2024 admitted that they have mis-classified the imported goods under CTH 74081920 instead of correct classification under CTH 83113010 and further clarified that their intention is not to mis-classify the goods and evade duty payment and that they classified the items to the best of their knowledge based on information available on Google. The appellant further requested to allow re-assessment of the said Bill of Entry under CTH 83113010 and waive adjudication, SCN and PH to avoid detention/demurrage charges.

2.7 Consequently the adjudicating authority passed a impugned order wherein the adjudicating authority ordered as under :-

- i. He rejected the classification of the goods i.e. 74081920 as declared by the importer in the Bill of Entry No. 3067699 dated 17.04.2024 and order to re-classify the goods under CTH 83113010 and re-assess the Bill of Entry accordingly.
- ii. He ordered to confiscate the impugned goods having assessable value of Rs. 23,63,953/-imported vide Bill of Entry No. 3067699 dated 17.04.2024, on account of misclassification under Section 111(m) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, he gave an option to the importer M/s Wellpack Industries to re-deem the same on payment of Redemption Fine of Rs. 2,80,000/- (Rs. Two lakh Eighty Thousand Only) in lieu of confiscation.
- iii. He imposed penalty of Rs. 10,000/- (Rs. Ten Thousand Only) on the importer M/s Wellpack Industries under Section 112(a)(ii) of Customs Act 1962.



3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that there is no dispute over description of goods. As such, there is no mis-declaration. Hence, provisions of Section 111 (m) of Customs Act,1962 for confiscation of goods and imposition of fine is not attracted. It is a settled law that simply claiming certain classification of goods does not amount to mis-declaration warranting confiscation under Section 111 (m) and imposition of penalty under Section 112 (a) of Custom Act,1962. On this basis, it is submitted that order for confiscation of goods resulting in levy of redemption fine and imposition of penalty on appellant is liable to be quashed and set aside.

3.2 The appellant has placed reliance is placed on the following amongst other decisions:

- (i) S. S. Enterprises v/s Commissioner of Customs, Hyderabad-II, 2019 (366) ELT 332 (Tri.-Hyd.)
- (ii) John Deere India Pvt. Ltd. v/s Commr. of Cus. (Preventive), Amritsar, 2018 (363) ELT 509 (Tri.-Chan.)

PERSONAL HEARING:

4. Personal hearing in the matter was held on 20.05.2025 wherein Shri Vikas Mehta, Consultant, appeared for hearing representing the appellant. He reiterated the submissions made in the appeal memorandum. He also submitted following citations and placed reliance on them:-

- 1) Final Order No. 40003/2025 dtd. 02.01.2025 of Hon'ble CESTAT, Chennai in Excise Appeal No. 40219/2022 in case of M/s. Shakti Tech Manufacturing India Pvt Ltd Vs. Commissioner of GST and Central Excise.

Final Order No. 78085/2025 dtd. 21.01.2025 of Hon'ble CESTAT, Kolkata in Customs Appeal No. 75490/2021 in case of Shri ,Ravi Sarda Proprietor of M/s. Mahesh Silks V/s. Commissioner of Customs (Port),Custom House ,Kolkata.



DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellants in their appeal. The Appellant has filed the present appeal on 29.07.2024. In the Form C.A.-1, the Appellant has mentioned date of communication of the impugned order as 31.05.2024. Hence, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has paid entire duty, Redemption fine and penalty. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- i. Whether the re-classification of the imported goods by the adjudicating authority from CTH 74081920 to CTH 83113010 is correct.
- ii. Whether the imported goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iii. Whether the Appellant is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

5.2 Firstly, I take up the issue whether the re-classification of the imported goods by the adjudicating authority from CTH 74081920 to CTH 83113010 is correct or otherwise. I note that the adjudicating authority has re-classified the goods from CTH 74081920 to CTH 83113010 based on detailed analysis of Chapter Notes and HSN explanatory notes, concluding that CTH 8311 is more specific for "Coil Nail Welding Wire" due to its intended use in welding. The Appellant's own submissions also align with the technical correctness of CTH 83113010 for welding wires, as they stated their product's specifications align perfectly with this HS Code. Therefore, the technical re-classification of the goods under CTH 83113010 appears to be correct and is upheld. Consequently, the differential duty arising from this re-classification is payable.

5.3 Now I come to the issue regarding whether the imported goods are liable




for confiscation under Section 111(m) of the Customs Act, 1962 or otherwise. The core contention of the Appellant is that this is a classification dispute and not a case of mis-declaration warranting confiscation and penalty. Section 111(m) of the Customs Act, 1962, provides for confiscation of goods that "do not correspond in respect of value or in any other particular with the entry made under this Act". Section 112(a)(ii) imposes a penalty on any person who does or omits to do any act which would render such goods liable to confiscation under Section 111.

5.4 I find significant merit in the Appellant's arguments and the judicial pronouncements cited. The Appellant consistently maintained that they declared the goods as "Coil Nail Welding Wire," and this physical description of the goods was not disputed. The goods were available for examination, and the discrepancy arose solely in the interpretation of the appropriate Customs Tariff Heading, not in the factual description of the goods themselves.

5.5 The adjudicating authority's finding that the Appellant "mis-declared the goods" under CTH 74081920 "with an intention to evade payment of correct duty" is not sufficiently substantiated by the evidence on record. The Appellant's explanation that they relied on general information (Google search) and consultations, coupled with their admission that they lack professional technical expertise in HS Code classification, indicates a bona fide attempt at classification rather than a deliberate intent to mis-declare or evade duty. The fact that the difference in duty rates was not substantial also lends credence to the absence of a clear mens rea to evade duty.

5.6 This distinction between a bona fide classification dispute and a deliberate mis-declaration is crucial and has been consistently upheld by various judicial fora as under :

- In S. S. Enterprises v/s Commissioner of Customs, Hyderabad-II, 2019 (366) ELT 332 (Tri.-Hyd.), it was clearly held that "Simply claiming the classification as such in their bill of entry does not amount to misdeclaration of the nature of the goods- Therefore the charge of the misdeclaration of the goods is not sustained and consequently confiscation of the goods is liable to be set aside and we do so. Consequently, the penalties imposed on the importer and others in the Impugned order also need to be set aside and we do so." This directly applies to the present case, where the nature of the goods was correctly declared.



- Similarly, in John Deere India Pvt. Ltd. v/s Commr. of Cus. (Preventive), Amritsar, 2018 (363) ELT 509 (Tri.-Chan.), the Tribunal observed that "as it is case of interpretation of classification, therefore, the goods are not liable for confiscation and no redemption fine is imposable on the said goods. Consequently, no penalty is imposable on the appellant." This reinforces the principle that a genuine classification dispute, even if it leads to a change in duty liability, should not automatically result in confiscation or penalties.
- Most pertinently, the Kolkata Tribunal in SHRI RAVI SARDA, PROPRIETOR OF M/s MAHESH SILKS Vs COMMISSIONER OF CUSTOMS (PORT), 2025-VIL-120-CESTAT-KOL-CU, a very recent judgment, unequivocally stated that "misclassification could not be equated with misdeclaration and it is a settled law that once the goods are correctly described, the bona fide adoption of classification by the importer cannot be equated with misdeclaration". The Tribunal in that case also set aside the confiscation and penalties. This judgment provides a strong legal precedent directly applicable to the facts of this appeal.

5.7 The principles laid down by the Hon'ble Supreme Court in cases concerning the requirement of mens rea for imposing penalties further strengthen the Appellant's position. I rely upon cases as under:

- In Cosmic Dye Chemical Vs Collector of Central Excise, Bombay [1995 (75) ELT 721 (SC)], the Supreme Court held that mens rea is an essential ingredient for imposing penalty under the Central Excise Act, 1944, particularly where the provisions use terms like "fraud, collusion, wilful misstatement or suppression of facts". While the Customs Act, 1962, may have different phrasing, the underlying principle that a penalty should not be imposed for a mere technical or venial breach, without a deliberate intention to evade duty, is highly relevant.
- Further, in UOI Vs Rajasthan Spinning and Weaving Mills [2009 (238) ELT 3(SC)], the Supreme Court reiterated that for imposing penalty under certain provisions, especially those involving "fraud, collusion, wilful misstatement, suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty," mens rea is essential. The Court emphasized that a mere breach of law is not sufficient for imposing a penalty; there must be a deliberate intention to evade duty.




5.8 Applying these Supreme Court pronouncements to the present case, the adjudicating authority's imposition of penalty under Section 112(a)(ii) of the Customs Act, 1962, which is linked to goods being liable for confiscation due to mis-declaration, cannot be sustained. As established, the issue was a bona fide classification dispute, and the Department has failed to demonstrate any deliberate intention or mens rea on the part of the Appellant to mis-declare the goods or evade duty. The Appellant's actions, including their reliance on readily available information and their willingness to cooperate, do not suggest a fraudulent or wilful attempt to evade duty. Therefore, in the absence of proven mens rea, the penalty imposed is unwarranted.

5.9 In the present case, the Appellant did not conceal the goods or misrepresent their physical nature. The dispute is purely interpretative regarding the correct tariff classification. While the Customs authorities have the right to re-assess and re-classify goods, such re-classification in a bona fide dispute, where the goods are correctly described, does not automatically lead to the conclusion of mis-declaration with intent to evade duty. The burden to prove mens rea for imposing penalties lies heavily on the Department, which has not been adequately discharged in this case. Therefore, since the charge of mis-declaration, which is a prerequisite for confiscation under Section 111(m) and penalty under Section 112(a)(ii) in this context, has not been established with sufficient evidence of fraudulent intent, the confiscation of goods and imposition of penalty are not sustainable.

5.10 In light of the detailed discussions above and the consistent judicial pronouncements, I find that while the re-classification of the goods to CTH 83113010 is technically correct and the differential duty is payable, the Appellant's actions do not fall within the ambit of mis-declaration warranting confiscation or penal action under Sections 111(m) and 112(a)(ii) of the Customs Act, 1962. The Appellant acted in a bona fide manner, and the dispute is one of classification interpretation rather than intentional misrepresentation or evasion.

6. In view of the above findings, I pass the following order:-

(i) I uphold the re-classification of the goods, "Coil Nail Welding Wire", under CTH 83113010 as determined by the adjudicating authority. The differential duty arising from this re-classification shall be payable by the Appellant.

(ii) I set aside the order of confiscation of the impugned goods under Section 111(m) of the Customs Act, 1962, and consequently, the Redemption Fine of Rs. 2,80,000/- imposed under Section 125 of the Customs Act, 1962, is also set aside.



(iii) I set aside the penalty of Rs. 10,000/- imposed on the Appellant under Section 112(a)(ii) of the Customs Act, 1962.

7. The appeal filed by M/s. Wellpack Industries is hereby allowed in the manner stated above.



सત્ત્યાપિત/ATTESTED
Prashant
 અધીકારી/SUPERINTENDENT
 સીમા આપુલ્ટ (અપેલી), અહેમદાબાદ.
 CUSTOMS (APPEALS), AHMEDABAD.

F. No. S/49-98/CUS/MUN/2024-25


 (AMIT GUPTA)
 Commissioner (Appeals),
 Customs, Ahmedabad

Date: 02.06.2025

By Registered post A.D/E-Mail 1141

To,
 M/s Wellpack Industries
 Sr. No. 191, Pl, Plot No. - 1,
 Opp. R.K. Industrial Zone-11, Kuvadava,
 Wankaner Road, Sanosara,
 Rajkot, Gujarat-360003

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.