

	<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>	
-----------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------

A	FILE NO.	F. No. GEN/ADJ/ADC/97/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO.	MCH/ADC/AK/77/2024-25
C	PASSED BY	ARUN KUMAR ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
D	DATE OF ORDER	20.06.2024
E	DATE OF ISSUE	21.06.2024
F	SCN NUMBER & DATE	CUS/APR/MISC/4892/2023-Gr 3-O/o Pr Commr-Cus-Mundra dated 23.06.2023
G	NOTICEE/ PARTY/ IMPORTER	1. M/s. Nishant International 2. M/s. Venus Sea-Air Services Pvt. Ltd.
H	DIN NUMBER	20240671MO000000EE47

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 धारा128 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 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 FACT OF THE CASE:

M/s. Nishant International, Shop No. 205, 1 st Floor, Oreva Landmark, Below Hotel Shiv Ajanta, Near Trajpar Crossing, Morbi, Gujarat – 363642, holding IEC No. 2414012480 (here-in-after referred as “the importer” for the sake of brevity) had filed Bill of Entry No. 6688842 dated 30.01.2020 for re-import of Ceramic Glazed Wall Tiles through their Customs Broker M/s. Venus Sea-Air Services Pvt. Ltd., Ludhiana.

2. During the course of the Customs Revenue Audit (CRA), it was observed that notification no. 45/2017-customs dated 30.6.2017 exempts the goods falling with any chapter of the First Schedule of the Customs Tariff Act, 1975, when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the first schedule, and the whole of the integrated tax, compensation cess leviable thereon respectively under sub-section (7) and (9) of Section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further, Sr.No. 1(d) of the table of said notification states that if the goods exported under

bond without payment of integrated Tax then amount of Integrated Tax not paid to be paid at the time of import.

3. Notification No. 46/2017-Customs dated 30.6.2017 exempts the goods falling within any chapter of the first schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the table therein when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the additional duty, integrated tax, compensation Cess leviable thereon respectively under sub-sections (1), (3), (5), (7) and (9) of section 3 of the said Customs Tariff Act as in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further Sr. No. 1(d) of Table of the said notification states that if the goods exported under bond without payment of central excise duty then amount of central excise duty not paid to be paid at the time of import.

4. Whereas it appears that the importer had exported their goods without payment of integrated tax which is to be paid at the time of reimport if not paid at the time of export. It is evident on records that the importer did not pay the IGST at the time of Re-import. Thus the IGST amount not paid is required to be demanded and recovered from the importer. The details of IGST not paid is as under:

Table-I

Sr. No.	Bill of Entry No. & date	Importer	Item Description	Qty.	Assessable value	Duty leviable as per 1(d) of Not. No. 46/2017	Short levy(in Rupees)	Shipping Bill No.& date
1	6688842 dt. 30.01.2020	M/s. Nishant International	Re-import-Ceramic Glazed Wall Tiles-size 300*600	5967 SQM	1359580.9	III-185A-18%	244725	4991242 dt. 20.05.2018
2			Re-import-Ceramic Colored floor Tiles-size 300*300	1458 SQM	289340.1	III-185A-18%	52081	
3			Re-import-Ceramic Glazed Coloured floor Tiles-size 800*800	11750.4 SQM	4404637.4	III-185A-18%	792835	
Total							1089641	

5. Whereas, it appears that the said importer has wrongly assessed the goods which resulted in short levy and short payment of IGST amounting to Rs. 10,89,641/-. Since the advent of self-assessment in 2011, it is the responsibility of the importer while presenting the bill of entry under section 46 of the Customs Act, 1962, shall make and subscribe to a

declaration as to the truth and correctness of the contents of the bill of entry and to classify the goods under appropriate tariff item. In the instant case, the importer has not paid the IGST on re-import of exported goods. It appears that the short paid IGST is required to be recovered under Section 28 of Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017. Further, penalty is also required to be imposed on the importer under Section 114A of the Customs Act, 1962 and also on the Customs Broker for filing Bill of Entry by wrongly assessing the goods which resulted in short payment of Central Excise/IGST under Section 117 of the Customs Act, 1962.

6. The import of goods has been defined in the IGST Act, 2017 as bringing goods in India from a place outside India. All import shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under the Customs Act, 1962. The Section 5 of Integrated Goods and Service Tax Act, 2017 states "Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act 1962."

7. As per Section 3(7) of Customs Tariff Act, 1975 any article which has been imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty percent, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the imported article as determined under subsection 8 or sub-section 8A of the as the case may be.

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

A . Self-assessment: After the introduction of self-assessment vide Finance Act, 2011, the onus is on the Importer to make true and correct declaration in all aspects including Classification and calculation of duty, but in the instant case the subject goods have been mis classified and IGST amount has not been paid correctly. Section 17(1) Assessment of duty, reads as:

"An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods."

CBEC's (now CBIC) Circular No.17/2011 dated 08.04.2011,

provides for self-assessment by the importers with effect from 08.04.2011 in accordance to the provisions of Finance Act' 2011. Self-Assessment inter-alia requires importers/exporters to correctly declare description of goods, value, classification, applicable rate of duty, benefit of exemption Notification claimed, if any, in respect of export/import goods while filing Bill of Entry/Shipping Bill.

- B. Section 3(7) of the Customs Tariff Act 1975, IGST was payable on imported goods, reproduced as under:

Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) [or sub-section (8A), as the case may be

- C. Section 5(1) of the Integrated Goods and Services Tax Act, 2017 which reads as under:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962).

- 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) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to 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:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals),

the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

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

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

Explanation. - For the removal of doubts, it is hereby declared that

—

- i. *the provisions of this section shall also apply to cases in which the order determining the duty or interest sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*
- ii. *any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.”*

G. Penalty under section 117 envisages where there is no other penalty provision applicable. Said section reads as under:

SECTION 117. Penalties for contravention, etc., not expressly mentioned. -

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.

9. Accordingly, a Show Cause Notice No. CUS/APR/MISC/4892/2023-Gr 3-O/o Pr Commr-Cus-Mundra dated 23.06.2023 was issued to M/s. Nishant International, Shop No. 205, 1 st Floor, Oreva Landmark, Below Hotel Shiv Ajanta, Near Trajpar Crossing, Morbi, Gujarat – 363642, wherein they were called upon to show cause in writing to the Additional Commissioner of Customs, Import having office at Office of the Principal Commissioner, Custom House, 5 B, Port User Building, Mundra Port, Mundra-Kutch within 30 (Thirty) days from the date of receipt of this notice, as to why:

- i. The Integrated Goods and Service Tax of Rs. 10,89,641/- (Rupees Ten Lakh Eighty Nine Thousand Six Hundred Forty One only) leviable on the impugned goods and not paid by them in terms of Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 should not be demanded and recovered from them;
- ii. Penalty should not be imposed on them under Section 114A of the Customs Act, 1962.

10. Further, vide above show cause notice, M/s. Venus Sea-Air Services Pvt. Ltd. (Custom Broker), State Nursery, Venus House, 155, Street No. 9, Opp. Urban Jeevan Nagar, Focal Point, Ludhiana, Punjab- 141010, was called upon to show cause to the Additional Commissioner of Customs, Import, Custom House, Mundra, having office at PUB Building, 5B, Mundra (Kutch) Gujarat 370421, as to why:

- i. Penalty should not be imposed on them under Section 117 of the Customs Act, 1962.

PERSONAL HEARING

11. Following the principles of natural justice, opportunity of personal hearing was given to the noticees on 23.04.2024, 15.05.2024 and 13.06.2024 in the subject case. However, noticees have neither submitted the reply of Show Cause Notice nor attended the PH. It is observed that sufficient opportunity has been given to Noticee but they chose not to join adjudication proceedings. Considering the scenario, there is no option but to proceed with the adjudication proceedings in terms of merit of the case ex-parte.

DISCUSSION & FINDING

12. I have carefully gone through the entire case record including the Show Cause Notice F. No. CUS/APR/MISC/4892/2023-Gr 3-O/o Pr Commr-Cus-Mundra dated 23.06.2023. I find that the main issues involved in the case which are required to be decided in the present adjudication are as below:

- i. Whether Integrated Goods and Service Tax of Rs. 10,89,641/- can be demanded on the impugned goods and not paid by importer in terms

of Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.

- ii. Whether the importer is liable to penalty under Section 114A of the Customs Act, 1962.
- iii. Whether the Customs Broker is liable to penalty under Section 117 of the Customs Act, 1962.

13. On going through the relevant Shipping Bill & Bill of Entry, I find that the impugned goods were exported vide Shipping Bill No. 4991242 dated 20.05.2018 and re-imported vide Bills of Entry No. 6688842 dated 30.01.2020 under first check, wherein the re-imported goods were 100% examined for the purpose of establishment of identity. I find that the exported goods have been reimported within 02 years.

14. I find that notification No. 45/2017-Customs dated 30.06.2017 exempts the goods falling with any chapter of the First Schedule of the Customs Tariff Act, 1975, when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the first schedule, and the whole of the integrated tax, compensation cess leviable thereon respectively under subsection (7) and (9) of Section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further, Sr.No, 1(d) of the table of said notification states that if the goods exported under bond without payment of integrated Tax then amount of Integrated Tax not paid to be paid at the time of import.

15. Further, I find that the Noticee exported their goods under LUT Bond and had claimed benefit of exemption under Sr. No. 1(a) of Notification No. 46/2017-Customs dated 30.06.2017 on re-import. Notification No. 46/2017-Customs dated 30.06.2017, exempts the goods falling within any chapter of the first schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the table below when re-imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the additional duty, integrated tax, compensation Cess leviable thereon respectively under sub-sections (1), (3), (5), (7) and (9) of section 3 of the said Customs Tariff Act as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table in the notification. Further Sr. No. 1(d) of Table of the said notification states that if the goods exported under bond without payment of central excise duty then amount of central excise duty not paid to be paid at the time of import.

16. Sr. No. 1(d) of the table of Notification No. 45/2017-Customs dated 30.06.2017 states that if the goods exported under bond without payment of integrated Tax then amount of Integrated Tax not paid to be paid at the time of import. The table of Notification No. 45/2017-Customs dated 30.06.2017 is as under:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

Notification No. 45/2017 – Customs

New Delhi, the 30th June, 2017

G.S.R. (E).-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when re- imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the whole of the, integrated tax, compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.

Table

Sl. No.	Description of goods	Conditions
(1)	(2)	(3)
1	<p>Goods exported -</p> <p>(a) under claim for drawback of any customs or excise duties levied by the Union</p> <p>(b) under claim for drawback of any excise duty levied by a State</p> <p>(c) under claim for refund of integrated tax paid on export goods</p> <p>(d) under bond without payment of integrated tax</p> <p>(e) under duty exemption scheme (DEEC/ Advance Authorisation/ DFIA) or Export Promotion Capital Goods Scheme (EPCG)</p>	<p>amount of drawback of customs or excise duties allowed at the time of export;</p> <p>amount of excise duty leviable by State at the time and place of importation of the goods, allowed at the time of export;</p> <p>amount of refund of integrated tax, availed at the time of export;</p> <p>amount of integrated tax not paid;</p> <p>amount of integrated tax and compensation cess leviable at the time and place of importation of goods and subject to the following conditions applicable for such goods -</p> <p>(i) DEEC book has not been finally closed and export in question is de-logged from DEEC Book; Advance Authorisation/DFIA</p>

		<p>has not been redeemed and the authorisation holder has not been discharged from the export obligation by DGFT;</p> <p>(ii) In case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding reimport have been made;</p> <p>(iii) The importer had intimated the details of the consignment re-imported to the Assistant Commissioner of Customs or Deputy Commissioner of Customs in charge of the factory where the goods were manufactured or the premises from where the goods were supplied and to the licensing authority regarding the fact of re-importation and produces a dated acknowledgement of such intimation at the time of clearance of goods;</p> <p>(iv) The manufacturer- exporters may be permitted clearance of such goods without payment of Central Excise duty or integrated tax and compensation cess under transit bond to be executed with the Customs authorities at the port of importation, such bond will be cancelled on the production of certificate issued by the jurisdictional Customs authority about receipt of re-imported goods into their factory or the premises from where the goods were supplied.</p>
2	Goods, other than those falling under Sl. No. 1 exported for repairs abroad	Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.
3	Cut and polished precious and semi-precious stones exported for treatment abroad as referred to in Paragraph 4A.20.1 of the Foreign Trade Policy, other than those falling under Sl. No. 1.	Duty of customs which would be leviable if the value of re-imported precious and semi-precious stones after treatment were made up of the fair cost of treatment carried out including cost of materials used in such treatment, whether such costs are actually incurred for not, insurance and freight charges, both ways.
4	Parts, components of aircraft replaced or removed during the course of maintenance, repair	Nil

	or overhaul of the aircraft in a Special Economic Zone and brought to any other place in India.	
	<i>Explanation.</i> - For the purpose of this notification, "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005)	
5	Goods other than those falling under Sl. No. 1, 2, 3 and 4	Nil :

17. In the instant case, I find that the Noticee has exported the impugned goods vide Shipping Bill No. 4991242 dated 20.05.2018 under LUT Bond and re-imported the same vide Bill of Entry 6688842 dated 30.01.2020. The importer has claimed benefit of exemption under Notification No. 46/2017-Customs dated 30.06.2017 on re-import. It is evident on records that the importer had exported their goods without payment of integrated tax which is to be paid at the time of reimport if not paid at the time of export. Thus the IGST amount not paid is required to be demanded and recovered from the importer.

18. I find that the importer has re-imported the goods under Bill of Entry No. 6688842 dated 30.01.2020 by wrongly claiming exemption under the said Notification No. 46/2017-Cus dated 30.06.2017 without payment of IGST as discussed above, which is not admissible in view of the statutory provisions discussed hereinabove, with a willful intention to evade applicable customs duty and thus, contravened the provisions of Section 17 and 20 of the Customs Act, 1962. The act and omission / commission on the part of the importer have resulted in non-payment of IGST amounting to Rs. 10,89,641/ which is to be paid by / recovered under Section 28 of Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with interest at appropriate rate as applicable under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017. Thus, I uphold the demand of IGST as proposed in the Show Cause Notice.

19. Further, from the advent of self-assessment in 2011, it is the responsibility of the importer while presenting the bill of entry under Section 46 of the Custom Act, 1962, "shall make and subscribe to a declaration as to the truth and correctness of the contents of the bill of entry and to classify the goods under appropriate tariff item". In the instant case, the importer has willfully suppressed the facts and deliberately misclassified the imported goods with a malafide intention to evade the duty. Therefore, the ingredients of wilful mis-statement with

intent to evade duty is vividly present in the instant case for invocation of extended period under Section 28(4) of the Customs Act, 1962 for demand and recovery of duty short levied or short paid. I, therefore hold that the noticee has short paid IGST by reasons of willful mis-statement and contravention of provisions of Customs Act, 1962 with intent to evade payment of duty and therefore, extended period of five years, instead of normal period of two years, under Section 28(4) of the Customs Act, 1962 is correctly invoked in the present case.

20. In respect of demand of interest under Section 28AA of the Customs Act, 1962, I find that as discussed above, the differential amount of duty i.e. IGST is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017, therefore, the importer is also liable to pay interest at appropriate rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017.

21. In respect of proposal of penalty under Section 114A of the Customs Act, 1962, I find that Section 114A ibid provides for imposition of penalty where the duty has not been levied/ short-levied by reason of collusion or any wilful mis-statement or suppression of facts. As discussed above, misdeclaration and evasion of IGST are in contravention of the provisions of Section 46(4) ibid. As discussed above, since ingredients of mis-statement and suppression of facts with intent to evade duty is present in the instant case, said duty is liable to be demanded and recovered from the importer under Section 28(4) of the Customs Act, 1962. Therefore, I hold the noticee liable to penalty under Section 114A of the Customs Act, 1962. However, as per first proviso to Section 114A of the Customs Act, 1962, if the importer pays the amount of duty determined in this order along with interest payable thereon within thirty days from the date of communication of this order, the amount of penalty liable to be paid shall be twenty-five percent of the duty determined in this order. The benefit of reduced penalty shall be available if the amount of reduced penalty is also paid within the aforesaid period of thirty days.

22. As regards imposition of penalty on the Customs Broker, I find that it is not a case where there are some evidences on record against the CB, that they had previous knowledge of such happening. Further there is no evidence to show that CB has connived with the importer for duty evasion.

22.1 I find that in the case of Commissioner of Customs Vs B. Dhananjayan (CESTAT Chennai) Custom Appeal No. 40323 of 2021, the tribunal held that agent is not an inspector, but rather a processing agent of documents with respect to clearance of goods through Customs House; there was nothing on record to show that the appellant therein had knowledge that the goods mentioned in the shipping bills did not reflect the truth of the consignment sought to be exported and in the absence of such knowledge, there cannot be any mens rea attributed to the appellant or its proprietor.

22.2 In view of above discussion I do not impose any penalty on the Customs Broker.

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

ORDER

- i. I confirm the demand of Integrated Goods and Service Tax of Rs. 10,89,641/- (Rupees Ten Lakh Eighty Nine Thousand Six Hundred Forty One only) leviable on the impugned goods in respect of Bills of Entry 6688842 dated 30.01.2020 and order the same to be recovered from importer under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest at appropriate rate under Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017;
- ii. I impose a penalty of Rs.10,89,641/- (Rupees Ten Lakh Eighty Nine Thousand Six Hundred Forty One only) on M/s. Nishant International under Section 114A of the Customs Act, 1962;
- iii. I refrain from imposing any penalty on M/s Venus Sea-Air Services Pvt. Ltd. under section 117 of the Custom Act, 1962.

24. 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.

25. Show Cause Notice dated 23.06.2023 issued vide F. No.- CUS/APR/MISC/4892/2023-Gr 3-O/o Pr Commr-Cus-Mundra is hereby disposed off in above terms.

Arun Kumar
ADDITIONAL COMMISSIONER
Custom House, Mundra.

F. No. I/2066500/2024

Date: 20-06-2024

To,

1. M/s. Nishant International,
Shop No. 205, 1 st Floor, Oreva Landmark,
Below Hotel Shiv Ajanta, Near Trajpar Crossing,
Morbi, Gujarat-363642
2. M/s. Venus Sea-Air Services Pvt. Ltd. (Custom Broker),
State Nursery, Venus House, 155, Street No. 9,
Opp. Urban Jeevan Nagar, Focal Point,
Ludhiana, Punjab-141010.

Copy to:

1. The Deputy/Assistant Commissioner (RRA), Customs House, Mundra
2. The Deputy/Assistant Commissioner (TRC), Customs House, Mundra
3. The Deputy/Assistant Commissioner (EDI), Customs House, Mundra
for uploading the same on the website of Customs House, Mundra
4. Guard File.