F. No. VIII/10-128/ICD-Khod/O&A/HQ/2024-25
OIO No. 55/ADC/SR/O&A/HQ/2025-26

प्रधान आयुक्त का कार्यालय, सीमा शुल्क ,अहमदाबाद

"सीमाशुल्क भवन ,"पहली मंजिल ,पुराने हाईकोर्ट के सामने ,नवरंगपुरा ,अहमदाबाद – 380 009.
दूरभाष :(079) 2754 4630 **E-mail:** cus-ahmd-adj@gov.in फैक्स :(079) 2754 2343

DIN: 20250671MN00008.9099

PREAMBLE

A	फ़ाइल संख्या/ File No.	:	F. No. VIII/10-128/ICD-Khod/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या–तारीख / Show Cause Notice No. and Date	:	F. No. VIII/10-128/ICD-Khod/O&A/HQ/2024-25 Dated 21.10.2025
C	मूल आदेश संख्या/ Order-In-Original No.	:	**55/ADC/SR/O&A/2025-26**
D	आदेश तिथि/ Date of Order-In-Original	:	**23.06.2025**
E	जारी करनेकी तारीख/ Date of Issue	:	**23.06.2025**
F	द्वारापारित/ Passed By	:	**SHRAVAN RAM**, Additional Commissioner, Customs Ahmedabad.
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/s. **HAVMOR ICE CREAM PRIVATE LIMITED**, 2nd Floor, Commerce House-IV, Beside Shell Petrol Pump, Opp. Shivalik, 100 Feet Road, Prahlad Nagar, Satelite, Ahmedabad – 380 015, Gujarat
(1)	**यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।**		
(2)	**कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंज़िल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।**		
(3)	**अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:**		
(i)	**अपील की एक प्रति और;**		
(ii)	**इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।**		
(4)	**इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।**		

BRIEF FACTS OF THE CASE:

M/S. **HAVMOR ICE CREAM PRIVATE LIMITED**, having their registered address at 2nd Floor, Commerce House-IV, Beside Shell Petrol Pump, Opp. Shivalik, 100 Feet Road, Prahlad Nagar, Satellite, Ahmedabad – 380 015, Gujarat (herein after referred to as "M/s. Havmor" or "the importer" or "the noticee" for the sake of brevity), having Import Export Code (IEC) **0808015699** and is importing goods, through Inland Container Depot, Khodiyar, Ahmedabad.

2. It was observed that M/s. Havmor have imported Ice Cream sticks bearing Item description such as "ICE CREAM STICK", "ICE CREAM SPOON", "WOODEN STICK: ICE CREAM STICK" etc. (herein after referred to as "the imported goods") falling under Customs Tariff Item (CTI) 44219990 of the Customs Tariff Act, 1975 under various Bills of Entry No. as mentioned in Annexure-A **[RUD-1 to the SCN]**, wherein IGST has been paid @ 12% under S. No. 101 of Schedule II of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

3. Based on Audit observations, the department carried out data analysis in respect of imports of miscellaneous articles of wood such as "Ice Cream Sticks" "Ice Cream Spoon", "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" etc. with regard to the payment of IGST. These miscellaneous articles of wood merit classification under CTI 4421 of the Customs Tariff Act, 1975 and the rate of IGST is leviable as per Schedule-I to VI appended to IGST Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended.

3.1 It is pertinent to mention that S. No. 92A of Schedule-II of IGST Notification No. 01/2017- Integrated Tax (Rate) prescribes 12 % IGST on *"Idols of wood, stone [including marble] and metals [other than those made of precious metals]"* for CTH 44, 68 or 63. Further S. No. 101 of Schedule-II also prescribes 12 % IGST on *"Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchen ware"* under CTH 4421. Beside S. No. 92A and 101 of Schedule-II of IGST Notification 01-2017-Intergrated Tax (Rate), there is no other entry for CTH 44 in Schedule II of the said notification. S. No. 92A and 101 of Schedule-II have well defined list of articles of wood covered in entries. Relevant entries are reproduces below:-

Schedule II –12%

"S. No.	*Chapter / Heading / Sub-heading / Tariff item*	*Description of Goods*
…		
92A	*44, 68, 83*	*Idols of wood, stone [including marble] and metals [other than those made of precious metals]*
…		
101	*4421*	*Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and*

		kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware"

3.2 It appeared that the miscellaneous items "Ice Cream Sticks", "Ice Cream Spoon" and "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" does not merit to be included in Entry No. 92A or 101 of Schedule-II.

4. It was further observed that M/s. Havmor have imported Ice Cream sticks bearing Item description such as "ICE CREAM STICK", "ICE CREAM SPOON", "WOODEN STICK: ICE CREAM STICK" etc. falling under Customs Tariff Item 44219990 of the Customs Tariff Act, 1975 while paying IGST @ 12% under S. No. 101 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017.

4.1 However, It further appeared that the said imported goods falling under Tariff Item 44219990 of the CTA, 1975 imported by M/s. Havmor are not specified in any of Schedules I to VI, and the same need to be classified under residuary entry viz. S. No. 453 of Schedule-III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 as amended.

Schedule III –18%

"…		
453	*Any Chapter*	*Goods which are not specified in Schedule I, II, IV, V or VI"*

4.2 Therefore, it appeared that the said imported goods attract IGST rate of 18% and M/s. Havmor is required to pay differential IGST as summarized in Table-1 below:-

Table-1

Value of the Goods	**IGST Paid**	**IGST Payable**	**Differential IGST**
6,42,03,010/-	85,51,841/-	1,28,27,761/-	42,75,920/-

5. The aforesaid observation was communicated to M/s. Havmor, vide letter F. No. VIII/22-06/ICD/Audit/2022 dated 25.11.2022, VIII/22-06/ICD/AN-9/Audit/2022 dated 18.01.2023, reminder dated 08.02.2023, and Letter F. No. VIII/22-13/ICD/LAR-14/Gr. II (H-K)/2024 dated 31.05.2024 **[RUD-2 to the SCN]**, with a request to pay the differential IGST amount along with applicable interest and to submit the payment particulars. However, M/s. Havmor has not responded to the aforesaid communications.

6. The import of goods has been defined in the Integrated Goods and Service Tax Act, 2017 (herein after referred to as 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 Customs 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. Section 5 of the Integrated Goods and Services Tax Act, 2017 stipulates that "*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.*"

6.1 As per sub-section (7) of Section 3 of the CTA, 1975, 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.

7. From the Bills of Entry filed by M/s. Havmor at the time of import of the said goods, it appeared that they have wrongly claimed the inadmissible benefit of IGST of 12% under S. No. 101 of Schedule II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, for the products imported under the various Bills of Entry as mentioned in Annexure-A, though the said products appeared appropriately covered under S. No. 453 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate), as amended, and attract IGST Rate of 18%. The deliberate attempt to evade payment of duty is evident from the fact that M/s. Havmor has correctly mentioned S. No. 453 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 for the products imported under previous Bills of Entry as mentioned in Annexure-A1 [**RUD-3 to the SCN**] and has paid appropriate IGST @ 18%.

7.1 Even after pointing out / communicating to M/s. Havmor vide letter F. No. VIII/22-06/ICD/Audit/2022 dated 25.11.2022, VIII/22-06/ICD/AN-9/Audit/2022 dated 18.01.2023, reminder dated 08.02.2023, and Letter F. No. VIII/22-13/ICD/LAR-14/Gr. II (H-K)/2024 dated 31.05.2024 that the imported items attracted IGST rate of 18% under S. No. 453 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate), and requesting them to pay the differential short paid Customs Duty (IGST), along with applicable interest, M/s. Havmor has neither responded to the aforesaid letters, nor paid the short paid duty, which shows that they had clear intention to evade payment of duty, as they suppressed the material facts and deliberately not mentioned correct S. No. of IGST Rate Notification and not paid the appropriate Customs Duty (IGST).

8. After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption Notification, applicable duties, rate of duties and its relevant Notifications with appropriate Serial number of the Notification etc., in respect of imported goods and pay the appropriate duty accordingly.

8.1 Section 17(1) is reproduced as under:-

"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."

8.2 It, therefore appeared that M/s. Havmor has willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to ensure the accuracy and completeness of the information given therein.

9. From the above, it could be seen that the importer had intentionally not declared correct Serial No. of IGST Rate Notification applicable to the imported goods in the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade payment of appropriate Customs Duty (IGST) and cleared the said imported goods without paying appropriate Customs Duty (IGST). Even after pointing out / communicating that they have not declared correct S. No. of IGST Rate Notification applicable to the imported goods and have short paid Customs Duty (IGST), they have not paid the same.

9.1 Section 28(4) is reproduced below:-

"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 duly 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."

9.2 It appeared that M/s. Havmor has indulged in willful mis-statement and suppression of facts inasmuch as they have filed Bills of Entry mentioning S. No. 101 of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) with IGST @ 12%, whereas the goods imported by them are covered under S. No. 453 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 18%, and thereby short paid Customs duty (IGST) of **Rs. 42,75,920/- (Rupees Forty Two Lakh Seventy Five Thousand Nine Hundred Twenty Only),** as mentioned in Annexure – A to the Show Cause Notice. The Customs duty (IGST) thus short levied and short paid by M/s. Havmor appeared recoverable from them under sub-section (4) of Section 28 of the Customs Act, 1962, along with appropriate interest at applicable rate under Section 28AA of the Customs Act, 1962.

9.3 Section 28AA of the Customs Act, 1962 states that:

> *"[**28AA. 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.*
> *(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,--*
> *(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and*
> *(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]"*

10. It further appeared that as per clause (m) of Section 111 of the Customs Act, 1962, any goods brought from a place outside India 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. As the goods imported by M/s. Havmor under various Bills of Entries as mentioned in Annexure-A did not correspond with S. No. 101 of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, mentioned in the said Bills of Entries filed by M/s. Havmor, the said goods totally valued at **Rs. 6,42,03,010/- (Rupees Six Crores Forty Two Lakh Three Thousand Ten Only),** as mentioned in Annexure – A to the Show Cause Notice, appeared liable for confiscation under Section 111(m) of the Customs Act, 1962.

10.1 Section 111(m) is as under:-

> "*The following goods brought from a place outside shall be liable to confiscation:*
>
> ....
>
> (m) *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of*

goods under transshipment, with the declaration for transshipment referred to in proviso to sub-section {1} of Section 54;

…".

11. The aforesaid acts of omission and commission on the part of M/s. Havmor appeared to have rendered them liable to penalty as provided under Section 112(a) of the Customs Act, 1962.

11.1 Section 112: It provides for penalty for improper importation of goods according to which,

"*Any person, -*
(a) who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
…
Shall be liable;-
…
(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher:
PROVIDED that where such duty 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 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 penalty so determined;
…"

12. As already discussed, the Customs duty (IGST) in the present case appeared to has been short levied and short paid by reason of willful mis-statement and suppression of facts on the part of M/s. Havmor, which appeared to have made them liable for penalty under Section 114A of the Customs Act, 1962.

12.1 Section 114 A:

"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 of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined."

13. M/s. Havmor in spite of being fully aware of the products purchased/imported, deliberately mis-declared the Sr. No. of IGST notification in their Bills of Entry, so as to avail the ineligible benefit of S. No. 101 of Schedule – II of Notification No. 1/2017-

Integrated Tax (Rate) dated 28.06.2017, as amended. Hence, for the said act of contravention on their part, M/s. Havmor appeared to be liable for penalty under Section 114AA of the Customs Act, 1962.

13.1 Section 114 AA:

"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods"

14. M/s. Havmor, was communicated the regarding observations of the Audit vide letter F. No. VIII/22-06/ICD/Audit/2022 dated 25.11.2022, VIII/22-06/ICD/AN-9/Audit/2022 dated 18.01.2023, reminder dated 08.02.2023, and Letter F. No. VIII/22-13/ICD/LAR-14/Gr. II (H-K)/2024 dated 31.05.2024, with a request to pay the differential IGST amount along with applicable interest and to submit the payment particulars. However, M/s. Havmor did not even reply to any of the said letters. Therefore, it appeared that M/s. Havmor failed to comply with the directions and liable for penalty under Section 117 of the Customs Act, 1962.

14.1 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 1[four lakh rupees]."

15. Thereafter, a show cause notice was issued to **M/s. Havmor Ice Cream Private Limited**, 2nd Floor, Commerce House-IV, Beside Shell Petrol Pump, Opp. Shivalik, 100 Feet Road, Prahlad Nagar, Satellite, Ahmedabad – 380 015, vide F. No. VIII/10-128/ICD-Khod/O&A/HQ/2024-25 dated 21.10.2024 to show cause to the Additional Commissioner of Customs, Ahmedabad, having his office at 2nd Floor, Custom House, Near All India Radio, Navrangpura, Ahmedabad – 380009, as to why –

(i) The imported goods *viz.* "Ice Cream Sticks/Spoon" imported by them, as detailed in Annexure-A to the Show Cause Notice, should not be held to be covered under S. No. 453 of Schedule – III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 18% and not under S. No. 101 /92A of Schedule –II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 12%;

(ii) The imported goods valued at Rs. 6,42,03,010/- (Rupees Six Crores Forty-Two Lakh Three Thousand Ten Only), as detailed in

Annexure-A to the Show Cause Notice, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962, and as the said goods had already been cleared, Redemption Fine in lieu of confiscation should not be imposed under Section 125 of the Customs Act, 1962.

(iii) The Customs duty (IGST) amounting to **Rs. 42,75,920/- (Rupees Forty-Two Lakh Seventy-Five Thousand Nine Hundred Twenty Only),** short levied and short paid by them, as detailed in **Annexure-A** to the Show Cause Notice, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;

(iv) Interest at applicable rate under Section 28AA of the Customs Act, 1962, on the aforesaid amount of short levied and short paid Customs duty (IGST) mentioned at sub-para (iii), should not be charged and recovered from them;

(v) Penalty should not be imposed on them under Section 112(a)/114A/144AA and 117 of the Customs Act, 1962.

16. PERSONAL HEARING AND DEFENCE REPLY:

16.1 Personal Hearing in the matter was held on 12.06.2025 wherein, Shri Hitesh Mundra, CA and Shri Sagar Jariwala, Dy. Manager, M/s. Havmor Ice Cream Private Limited appeared and submitted a written submissions dated 12.06.2025 interalia they submitted that:

- The company has decided to make payment of the differential duty along with applicable interest in order to avoid litigation. They have already submitted a letter to ICD Khodiyar for re-assessment of the Bills of Entry for making the payment. They have also submitted a letter dated 19.05.2025 to the adjudicating authority for the same. However, the subject goods should be subjected to IGST rate of 12%, as the subject goods are classifiable under 4419 90 90 and is exigible to 12% IGST in terms of Sr. No. 99B of Schedule II of Notification No. 01/2017. Further they referred the case of Raghu Packaging in Advance Ruling of Karnataka. (*KAR ADRG 18/2023*)

- Goods cannot be liable for confiscation under Section 111 (m) of the Customs Act, 1962 and redemption fine should not be imposed under Section 125 of the Customs Act, 1962 as the imported goods are no longer available for confiscation. In the instant case the imported goods are no longer available for confiscation by the department as the same is used in manufacture of the finished goods supplied to the customer. Therefore, redemption fine cannot be imposed upon in the instant case under section 125 of Customs Act, 1962. Further, no evidence has been put forth by the Department to show that imported goods were removed clandestinely. The imported goods were removed inadvertently upon payment of short duty which

the Noticee has admitted and also requested to re-assess the bill of entries for making payment of differential IGST amount along with interest. Therefore, redemption fine is not justified. They relied upon following judgments:

- DXN MANUFACTURING (INDIA) PVT. LTD. Versus C.C.E. & S.T, PONDICHERRY [2018 (11) G.S.T.L.68 (Tri. -Chennai)]
- FINESSE GREATION INC [2009 (248) E.L.T. 122 (Bom.)] maintained by Hon'ble SC [2010 (255) E.L.T. A120 (S.C.)]
- BRAMHANI INDUSTRIES LTD. Versus C.C. (AIRPORT & AIR CARGO), CHENNAI [2018 (363) E.1.T.277 (Tri. - Chennai)]
- SUNIL KUMAR GILRA Versus COMMISSIONER OF CUS. (EXP.), NHAVA SHEVA [2019 (370) E.L.T. 1553 (Tri. - Mumbai)]
- COMMR OF CUS., C. EX. & S.T., HYDERABAD-II Versus G.M.K. PRODUCTS PVT. LTD. [2020 (373) E.L.T.692 (Tri. - Hyd.)]
- SHIV KRIPA ISPAT PVT. LTD. Versus COMMISSIONER OF C. EX. & CUS., NASIK [2009 (235) E.L.T. 623 (Tri. - LB)]
- ELDER PHARMACEUTICALS Versus COMMR. OF CUS. (IMPORT) JNCH, NHAVA SHEVA [2019 (370) E.L.T. 1380 (Tri. - Mumbai)]
- TEJ OVERSEAS Versus COMMISSIONER OF CUSTOMS, MUMBAI [2018 (364) E.L.T. 407 (Tri. - Mumbai)]
- N.K. CHAUDHARI Versus COMMISSIONER OF CUSTOMS (EP), MUMBAI [2018 (363) E.L.T. 908 (Tri. - Mumbai)]
- DEV ANAND AGARWAL Versus COMMISSIONER OF CUSTOMS, NEW DELHI [2016 (337) E.L.T. 397 (Tri. - Del.)]
- METAL ORE Vs. COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI [2015 (321) E.L.T. 526 (Tri. - Mumbai)]
- M.S. Clothing Company vs. Commissioner of Customs (2024 TAXSCAN (CESTAT) 745)

- Imposition of Penalty under Section 112(a) of the Customs Act, 1962 is not Sustainable. The Noticee neither had any intention to evade payment of duty nor had any knowledge of the liability of the goods to confiscation. In the absence of any malafide on the part of the Noticee, no penalty is imposable under Section 112(a).

- Imposition of Penalty under Section 114A of The Customs Act 1962 is not Sustainable. The Noticee submits that the penalty under Section 114A can only be invoked when there is an act of omission resulting into confiscation under Section 111 on the part of the Appellant. It is submitted and clarified in the preceding paras that the Noticee has committed no offense, nor has made any omissions, commissions, or suppression in the entire matter. In the instant case, the Noticee as mentioned in the above Para has unintentionally/inadvertently discharged lesser IGST. Further, the Noticee has not been communicated by the Customs House Agent at the time of filing of BoEs regarding short payment or wrong rate selection at the time of import, the Noticee would have checked and paid correct IGST at the rate of 18% instead of 12% as the entire payment of IGST would be eligible to the Noticee as input tax credit under the GST law. Considering the revenue neutral situation and relying on the judicial precedents as provided below,

section 28(4) cannot be invoked for demanding differential IGST liability along with interest and penalty under section 114A. They relied upon following:

- COMMISSIONER OF CENTRAL EXCISE, MUMBAI Versus MAHINDRA & MAHTNDRA LTD [2005 (179) E.L.T. 21 (S.C.)]
- ASMITHA MICROFIN LTD Versus COMMR. OF CUS., C. EX. & S.T., HYDERABAD-III [2020 (33) G.S.T.L. 250 (Tri. - Hyd.)]
- SAROVAR HOTELS PVT. LTD. Versus COMMISSIONER OF SERVICE TAX, MUMBAI [2018 (10) G.S.T.L. 72 (Tri. - Mumbai)]
- K-AIR SPECIALITY GASES PLT. LTD. Versus COMMISSIONER OF C. EX., PUNE [2017 (4) G.S.T.L. 379 (Tri. - Mumbai)]
- BHARAT OMAN REFINERIES LTD. Versus COMMISSIONER OF C. EX. & S.T., BHOPAL [2017 (4) G.S.T.L. 221 (Tri. - Del.)]
- PCS TECHNOLOGY LTD. Versus COMMISSIONER OF GST & C. EX., PUDUCHERRY [2019 (369) E.L.T. 878 (Tri. - Chennai)]
- MAHINDRA & MAHINDRA LTD. Versus COMMR. OF C. EX., MUMBAI [2019 (368) E.L.T. 105 (Tri. - Mumbai)]
- Commissioner v. Mahindra & Mahindra Ltd. [2019 (368) E.L.T. A41 (S.C.)]
- ANGLO FRENCH TEXTILES Versus COMMISSIONER OF C. EX., PUDUCHERRY [2018 (360) E.L.T. 1016 (Tri. - Chennai)]
- NICHOIAS PIRAMAL (INDIA) LTD. Versus COMMR. OF C. EXCISE, RAIGAD [2017 (358) E.L.T.416 (Tri. - Mumbai)]
- TRINITY DIC FORGERS LTD. Versus COMMISSIONER OF CENTRAL EXCISE, PUNE-I [2017 (348) E.L.T.276 [Tri. - Mumbai)]
- COMMISSIONER OF C. EX., PUNE Versus COCA-COLA INDIA PVT. LTD. [2007 (213) E.L.T.490 (S.C.)]
- COMMISSIONER OF C. EX., CUS. & S.T., VAPI Versus TARAPUR GREASE INDIA PVT. LTD [2016 (334) E.L.T. 416 (Bom.)]
- SWEET INDUSTRIES INDIA PVT. LTD. Versus COMMR. OF C. EX., AURANGABAD [2016 (334) E.L.T. 164 (Tri. - Mumbai)]
- Commissioner v. Special Steel Ltd. –[2016 (334) E.L.T. A123 (S.C.)]
- Commissioner v. Reliance ADA Group Pvt. Ltd. [2020 (33) G.S.T.L. J133 (S.C.)]

- Imposition of penalty under section 114AA of the Customs Act, 1962 is not sustainable. The knowledge or intention of the person is essential for invoking this provision. The Noticee submit that there is no willful misstatement or suppression of facts. The alleged discrepancy was not intentional or with any fraudulent intent. Further, the Notice has now agreed to discharge the duty and interest liability. They relied upon the following:

- Bosch Chassis Esystems India Ltd. v. Commissioner of Customs, New Delhi (ICD TKD), 2015 (325) ELT 372 (Tri.-Del.)
- Commissioner of Customs (Import), Mumbai v. Tiong Woon Proiect & Contracting (I) P. Ltd.,2017 (356) ELT 138 (Tri.-Mumbai)
- Singh World v. Commissioner of Customs, New Delhi 2017 (353) ELT 243 (Tri.-Del.)

- Imposition of penalty under section 117 of the Customs Act, 1962 is not sustainable. The Noticee submit that it is a general penalty. Further, it has complied with all the provisions of the Act and there is no fraudulent intent of the Noticee. The above penalties should not be levied as there is no contravention of any of the provisions under law. Also, the Noticee has inadvertently short paid the duty. Further, it has not acted dishonestly or contumaciously and therefore, not even a token penalty could be justified. They relied upon the judgment of Hon'ble Delhi HC in the case of Bharat Hotels Ltd. versus Commissioner of C. EX. (Adjudication).
- They also requested to pass the order once the payment of tax and interest is paid through re-assessment of bill of entries.

16.2 During the personal hearing, the representatives of the noticee accepted to pay the differential duties along with interest. However, they requested that the order can be passed post re-assessment of the Bills of Entry in question. They also requested to waive the penalties and fine as they have no intention to evade the duties as the credit is available to the company.

17. DISCUSSION & FINDINGS:-

17.1 I have carefully gone through the facts of the case, defense submissions made by the importer M/s. Havmor Ice Cream Private Limited, oral submission made during the course of Personal hearing, the documents submitted including case laws cited by the said importer and records available on the file.

17.2 I find that the noticee have imported goods such as "ICE CREAM STICK", "ICE CREAM SPOON", "WOODEN STICK: ICE CREAM STICK" etc. falling under Customs Tariff Item (CTI) 44219990 of the Customs Tariff Act, 1975 under various Bills of Entry No. as mentioned in Annexure-A, wherein IGST has been paid @ 12% under S. No. 101 of Schedule II of Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017. I find that it was observed during the data analysis that the said goods were appropriately covered under S. No. 453 of Schedule III of Notification No. 1/2017-Integrated Tax (Rate), as amended, and attract IGST Rate of 18%. Therefore, it appeared that M/s. Havmor were required to pay differential IGST of Rs. 42, 75, 920/- under Section 28(4) along with interest under Section 28AA, the said goods appeared liable for confiscation under Section 111(m), and the noticee appeared liable for penalties under Section 112(a), 114A, 114AA and 117 of the Customs Act, 1962. Now, therefore, the issues before me are to decide:

(a) Whether the imported goods *viz.* "Ice Cream Sticks/Spoon" etc. are covered under S. No. 453 of Schedule – III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 18% and not under S. No. 101 /92A of Schedule –II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 12%?

(b) Whether Customs duty (IGST) amounting to Rs. 42,75,920/- (Rupees Forty-Two Lakh Seventy-Five Thousand Nine Hundred Twenty Only), is recoverable under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962?

(c) Whether the impugned goods are liable for confiscation as per the provisions of Section 111(m) of the Customs Act, 1962?

(d) Whether the Penalty is imposable on the noticee under Section 112(a), 114A, 114AA and 117 of the customs Act, 1962?

17.3 Now, I proceed to decide whether the imported goods *viz.* "Ice Cream Sticks/Spoon" etc. are covered under S. No. 453 of Schedule – III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 18% and not under S. No. 101 /92A of Schedule –II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, with IGST @ 12%.

17.3.1 I find that miscellaneous articles of wood such as "Ice Cream Sticks" "Ice Cream Spoon", "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" etc. merit classification under CTI 4421 of the Customs Tariff Act, 1975 and the rate of IGST is leviable as per Schedule-I to VI appended to IGST Notification 01/2017-Integrated Tax (Rate) dated 28.06.2017 as amended. The Customs Tariff Heading 4421 is given as under:

4421 - OTHER ARTICLES OF WOOD

…

4421 99 -- OTHER

….

4421 99 90 --- OTHERS

4421 99 90 --- CARVED WOOD PRODUCTS, ART WARE/DECORATIVE ARTICLES OF WOOD (INCLUDING INLAY WORK, CASKS, BARELS, VATS)

…

17.3.1.1 I find that Chapter 44 of the first schedule to the Customs Tariff Act, 1975 covers "*wood and articles of wood; wood charcoal*". Chapter Note 1 specifies some exclusions from this chapter and it is observed that the impugned goods are not covered under the said exclusions. Further this chapter covers *unmanufactured wood, semi-finished products of wood* and, in general, *articles of wood*. These *articles of wood* are grouped under the headings 44.14 to 44.21, which cover *manufactured articles of wood,*

whether made of ordinary wood or of particle board or similar board, fiberboard, laminated wood or densified wood, as specified in Note 3 to the Chapter. The impugned goods not being specified anywhere, merit Classification under CTI 4421 99 90 under 'Others'.

17.3.1.2 I find that the noticee has also mentioned in their reply that their goods should be classified under CTI 4419 90 90 and are exigible to 12% IGST in terms of Sr. No. 99B of Schedule II of Notification No. 01/2017 in view of the Advance Ruling Judgment in matter of *M/s. Ragu Packaging Supra*. Heading 4419 covers tableware and kitchenware of wood and specifically 4419 90 covers "tableware and kitchenware of other wood i.e. other than bamboo wood". I find that the impugned goods were self-assessed to classification of 4421 99 90 by the noticee themselves and the facts of the case for e.g. material of the ice cream sticks, ice cream spoons etc., are not on record to decide the classification. Therefore, I find that the advance ruling judgment of the case of Ragu packaging supra are not squarely applicable in this case. I find that the Advance Ruling is binding only in respect of the matter referred and it has no precedent value. Therefore, I hold that the correct classification of the impugned goods is 4421 99 90.

17.3.2 I find that there are only two entries in Schedule-II of IGST Notification 01-2017-Intergrated Tax (Rate), i.e. Sr. No. 92A and 101. S. No. 92A and 101 of Schedule-II have well defined list of articles of wood covered in entries as under:

Schedule II –12%

"S. No.	*Chapter / Heading / Sub-heading / Tariff item*	*Description of Goods*
…		
92A	*44, 68, 83*	*Idols of wood, stone [including marble] and metals [other than those made of precious metals]*
…		
101	*4421*	*Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchenware"*

17.3.2.1 From the above, I find that Sr. No. 92A of Schedule-II of IGST Notification No. 01/2017- Integrated Tax (Rate) prescribes 12 % IGST on *"Idols of wood, stone [including marble] and metals [other than those made of precious metals]"* for CTH 44, 68

or 63. Impugned goods such as "Ice Cream Sticks", "Ice Cream Spoon" and "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" does not merit to be included in Entry No. 92A as they are not the *idols of wood, stone [including marble] and metals [other than those made of precious metals]*.

17.3.2.2 Further S. No. 101 of Schedule-II also prescribes 12 % IGST on *"Other articles of wood; such as clothes hangers, Spools, cops, bobbins, sewing thread reels and the like of turned wood for various textile machinery, Match splints, Pencil slats, Parts of wood, namely oars, paddles and rudders for ships, boats and other similar floating structures, Parts of domestic decorative articles used as tableware and kitchenware [other than Wood paving blocks, articles of densified wood not elsewhere included or specified, Parts of domestic decorative articles used as tableware and kitchen ware"* under CTH 4421. However, I find that impugned goods such as "Ice Cream Sticks", "Ice Cream Spoon" and "Disposable Wooden Ear Buds and Toothpicks", "Bamboo Skewers", "Bamboo Sticks" does not merit to be included in Entry No. 101.

17.3.2.3 Beside S. No. 92A and 101 of Schedule-II of IGST Notification 01-2017-Intergrated Tax (Rate), there is no other entry for CTH 44 in Schedule II of the said notification. I find that the said imported goods falling under Tariff Item 4421 99 90 are not specified in any of Schedules I to VI, and the same need to be classified under residuary entry viz. S. No. 453 of Schedule-III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 as amended.

Schedule III –18%

"…		
453	*Any Chapter*	*Goods which are not specified in Schedule I, II, IV, V or VI"*

17.3.2.4 From the discussion above, I find that rate of IGST applicable on the impugned goods is 18% and not 12% as claimed in the BoE by the noticee.

17.4 Now, I proceed to decide whether Customs duty (IGST) amounting to Rs. 42,75,920/- (Rupees Forty-Two Lakh Seventy-Five Thousand Nine Hundred Twenty Only), is recoverable under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962.

17.4.1 I find that the SCN proposed to demand and recover the Customs duty (IGST) amounting to Rs. 42,75,920/- (Rupees Forty-Two Lakh Seventy-Five Thousand Nine Hundred Twenty Only), under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962. I find from the discussion in foregoing paras that impugned goods are liable to 18% IGST and not 12%.

17.4.2 The importer of goods has been defined in the Integrated Goods and Service Tax Act, 2017 (herein after referred to as 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 Customs 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. Section 5 of the Integrated Goods and Services Tax Act, 2017 stipulates that "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.

17.4.3 As per Sub-Section 7 of Section 3 of the 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 sub-section 8 or sub-section 8A as the case may be.

17.4.4 After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption notification, applicable duties, rate of duties and its relevant notifications etc. in respect of said imported goods and pay the appropriate duty accordingly, whereas, in the instant case, the importer has failed to correctly apply the applicable exemption notification on the imported goods the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade payment of duty and thereby they have not paid the appropriate Customs Duty on the said imported goods.

17.4.5 M/s. Havmor has willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to ensure the accuracy and completeness of the information given therein.

17.4.6 I find that in their self-assessment of the Bills of Entry, the noticee has failed to correctly declare the imported goods and suppressed the material facts with an intent to evade Customs duty, which was pointed out by the alert from National Customs Targeting Centre (NCTC), which led to inquiry into the said Bills of Entry. I also find that in their submission dated 19.05.2025 and 12.06.2025, they accepted to pay the differential duty. However, I find that they have not paid the same till date.

17.4.7 From the above, I find that the importer had intentionally not declared correct Serial No. of IGST Rate Notification applicable to the imported goods in the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade payment of appropriate Customs Duty (IGST) and cleared the said imported goods without paying appropriate Customs Duty (IGST). Even after pointing out/communicating that they have not declared correct Sr. No. of IGST Rate

Notification applicable to the imported goods and have short paid Customs Duty (IGST), they have not paid the same.

17.4.8 I rely on the ratio of the decision of jurisdictional Hon'ble Gujarat High Court rendered in case of ***M/S. COMMISSIONER OF C.EX. SURAT-I VS. NEMINATH FABRICS PVT. LTD. REPORTED IN 2010 (256) E.L.T. 369 (GUJ.).*** Though the said case is relating to Section 11A of the Central Excise Act, 1944 but Section11A of the Central Excise Act, 1944 is *pari materia* with Section 28 of the Customs Act, 1962 as held by the Hon'ble Supreme Court in the case *OF* ***UNIWORTH TEXTILES LTD. VS. COMMISSIONER REPORTED IN 2013 (288) E.L.T. 161 (S.C.).*** Hon'ble Gujarat High Court in the said case, interalia has held as under:

> ***"11.*** *A plain reading of sub-section (1) of Section 11A of the Act indicates that the provision is applicable in a case where any duty of excise has either not been levied/paid or has been short levied/short paid, or wrongly refunded, regardless of the fact that such non levy etc. is on the basis of any approval, acceptance or assessment relating to the rate of duty or valuation under any of the provisions of the Act or Rules thereunder and at that stage it would be open to the Central Excise Officer, in exercise of his discretion to serve the show cause notice on the person chargeable to such duty within one year from the relevant date.*
>
> ***12.*** *The Proviso under the said sub-section stipulates that in case of such non levy, etc. of duty which is by reason of fraud, collusion, or any mis-statement or suppression of facts, or contravention of any provisions of the Act or the rules made thereunder, the provisions of sub-section (1) of Section 11A of the Act shall have effect as if the words "one year" have been substituted by the words "five years".*
>
> ***13.*** *The Explanation which follows stipulates that where service of notice has been stayed by an order of a Court, the period of such stay shall be excluded from computing the aforesaid period of one year or five years, as the case may be.*
>
> ***14.*** *Thus the scheme that unfolds is that in case of non levy where there is no fraud, collusion, etc., it is open to the Central Excise Officer to issue a show cause notice for recovery of duty of excise which has not been levied, etc. The show cause notice for recovery has to be served within one year from the relevant date. However, where fraud, collusion, etc., stands established the period within which the show cause notice has to be served stands enlarged by substitution of the words "one year" by the words "five years". In other words the show cause notice for recovery of such duty of excise not levied etc., can be served within five years from the relevant date.*

15. *To put it differently, the proviso merely provides for a situation whereunder the provisions of sub-section (1) are recast by the legislature itself extending the period within which the show cause notice for recovery of duty of excise not levied etc. gets enlarged. This position becomes clear when one reads the Explanation in the said sub-section which only says that the period stated as to service of notice shall be excluded in computing the aforesaid period of "one year" or "five years" as the case may be.*

16. *The termini from which the period of "one year" or "five years" has to be computed is the relevant date which has been defined in sub-section (3)(ii) of Section 11A of the Act. A plain reading of the said definition shows that the concept of knowledge by the departmental authority is entirely absent. Hence, if one imports such concept in sub-section (1) of Section 11A of the Act or the proviso thereunder it would tantamount to rewriting the statutory provision and no canon of interpretation permits such an exercise by any Court. If it is not open to the superior court to either add or substitute words in a statute such right cannot be available to a statutory Tribunal.*

17. The proviso cannot be read to mean that because there is knowledge, the suppression which stands established disappears*. Similarly the concept of reasonable period of limitation which is sought to be read into the provision by some of the orders of the Tribunal also cannot be permitted in law when the statute itself has provided for a fixed period of limitation. It is equally well settled that it is not open to the Court while reading a provision to either rewrite the period of limitation or curtail the prescribed period of limitation.*

18. *The Proviso comes into play only when suppression etc. is established or stands admitted. It would differ from a case where fraud, etc. are merely alleged and are disputed by an assessee.* ***Hence, by no stretch of imagination the concept of knowledge can be read into the provisions because that would tantamount to rendering the defined term "relevant date" nugatory and such an interpretation is not permissible.***

19. The language employed in the proviso to sub-section (1) of Section 11A, is, clear and unambiguous and makes it abundantly clear that moment there is non-levy or short levy etc. of central excise duty with intention to evade payment of duty for any of the reasons specified thereunder, the proviso would come into operation and the period of limitation would stand extended from one year to five years. This is the only requirement of the provision. Once it is found that the ingredients of the proviso are satisfied, all that has to be seen as to what is the relevant date and as to

whether the show cause notice has been served within a period of five years therefrom.

20. *Thus, what has been prescribed under the statute is that upon the reasons stipulated under the proviso being satisfied, the period of limitation for service of show cause notice under sub-section (1) of Section 11A, stands extended to five years from the relevant date. The period cannot by reason of any decision of a Court or even by subordinate legislation be either curtailed or enhanced. In the present case as well as in the decisions on which reliance has been placed by the learned advocate for the respondent, the Tribunal has introduced a novel concept of date of knowledge and has imported into the proviso a new period of limitation of six months from the date of knowledge. The reasoning appears to be that once knowledge has been acquired by the department there is no suppression and as such the ordinary statutory period of limitation prescribed under sub-section (1) of Section 11A would be applicable. However such reasoning appears to be fallacious inasmuch as once the suppression is admitted,* ***merely because the department acquires knowledge of the irregularities the suppression would not be obliterated****."*

17.4.9 Therefore, I hold that the noticee knowingly mis-classified the imported goods and suppressed the material facts with an intent to evade Customs duty, and made themselves liable to pay differential duty under the provisions of section 28(4) of the Customs Act, 1962 with interest under Section 28AA.

17.5 Now, I proceed to decide whether the impugned goods are liable for confiscation as per the provisions of Section 111(m) of the Customs Act, 1962.

17.5.1 I find that in the Show Cause Notice, it is alleged that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. From the perusal of Section 111(m) of the Customs Act, 1962 it is clear that any goods which are imported by way of the mis-declaration, will be liable to confiscation. As discussed in the foregoing paras, it is evident that M/s. Havmor has deliberately not declared correct Serial No. of IGST Rate Notification applicable to the imported goods with an intention to evade payment of due customs duty.

17.5.2 I find that in terms of Section 46 (4) of the Customs Act, 1962, M/s. Havmor was required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs Duty but they have contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as they have not declared correct Serial No. of IGST Rate Notification applicable to the imported goods and thereby short paid the duty with clear intent to evade payment of Customs Duty. All these acts on part of M/s. Havmor have rendered the imported goods liable to confiscation under Section 111 (m) of the Customs Act, 1962.

17.5.3 As the impugned goods are found liable to confiscation under Section 111 (m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section 125(1) of Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods, which are not physically available for confiscation. The Section 125 (1) of the Customs Act, 1962 reads as under:-

"***125 Option to pay fine in lieu of confiscation*** –

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit…"

17.5.4 M/s. Havmor have contested that the Provisions of Section 111(m) of the Customs Act, 1962 are not invokable for the goods already cleared. I find that the noticee have contended that as the imported goods are not physically available having been cleared and utilized in manufacturing, the same cannot be confiscated and no redemption fine is imposable. They also submitted several case laws in support of their claim such as *DXN MANUFACTURING (SUPRA), BRAMHANI INDUSTRIES (SUPRA), FINESSE CREATION INC (SUPRA), METAL ORE (SUPRA), M.S. CLOTHING COMPANY (SUPRA)* etc., facts of the cases *DXN MANUFACTURING (SUPRA), METAL ORE (SUPRA) and M.S. CLOTHING COMPANY (SUPRA)* are different and not squarely applicable on the present Case.

17.5.5 I find that though, the goods are not physically available for confiscation and in such cases redemption fine is imposable in light of the judgment in the case of ***M/S. VISTEON AUTOMOTIVE SYSTEMS INDIA LTD. REPORTED AT 2018 (009) GSTL 0142 (MAD)*** wherein the Hon'ble High Court of Madras has observed as under:

"….
….
….

23. *The penalty directed against the importer under Section 112 and the fine payable under Section 125 operates 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. We accordingly answer question No. (iii).

....

...."

17.5.6 I also find that Hon'ble High Court of Gujarat by relying on this judgment, in the case of ***SYNERGY FERTICHEM LTD. VS. UNION OF INDIA, REPORTED IN 2020 (33) G.S.T.L. 513 (GUJ.),*** has followed the dictum as laid down by the Madras High Court. In view of the above, I reject the contentions of the noticee and hold that issue of redemption fine as discussed in judgments of BRAMHANI INDUSTRIES (SUPRA), FINESSE CREATION INC (SUPRA) etc. have been settled in the judgment of ***M/s. VISTEON AUTOMOTIVE (supra)*** and as such I hold that redemption fine is imposable on the subject goods under Section 125 of the Act. I also hold that the ratio of case laws cited by the noticee is not squarely applicable to the present case.

17.6 Now, I proceed to decide whether the Penalty is imposable on the noticee under Section 112(a), 114A, 114AA and 117 of the customs Act, 1962.

17.6.1 Penalty under Section 114A of the Customs Act, 1962: I find that the demand of differential duty has been made under Section 28(4) of the Customs Act, 1962, which provides for demand of Duty not levied or short levied by reason of collusion or wilful mis-statement or suppression of facts. Hence as a naturally corollary, penalty is imposable on the Importer under Section 114A of the Customs Act, which provides for penalty equal to Duty plus interest in 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 wilful mis statement or suppression of facts. In the instant case, the ingredient of suppression of facts by the importer has been clearly established as discussed in foregoing paras and hence, I find that this is a fit case for imposition of quantum of penalty equal to the amount of Duty plus interest in terms of Section 114A ibid as proposed in the Show Cause Notice.

17.6.2 Penalty under Section 112 of the Customs Act, 1962: I find from the discussion in the foregoing paras, that the impugned goods imported by M/s. Havmor under various Bills of Entries as mentioned in Annexure-A to the Show Cause Notice did not correspond with Sr. No. 101 of Schedule – II of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017, as amended, mentioned in the said Bills of

Entries filed by M/s. Havmor and the said goods totally valued at Rs. 6,42,03,010/- (Rupees Six Crores Forty Two Lakh Three Thousand Ten Only), are liable for confiscation under Section 111(m) of the Customs Act, 1962. I find that as per Section 112 (a)(ii), *"(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114 A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher"*. Due to commissions and omissions on the part of M/s. Havmor, I hold them liable for penalty under Section 112(a)(ii) of the Customs Act, 1962. I further find that in view of the proviso to section 114A of Customs Act, 1962, that where any penalty has been levied under this section, no penalty shall be levied under section 112 or 114. Thus I refrain from imposing on them penalty under 112(a)(ii) of the Customs Act, 1962.

17.6.3 Penalty under Section 114AA of the Customs Act, 1962: I find that the Show Cause Notice proposes to impose penalty on the noticee under Section 114AA of the Customs Act, 1962. The text of the said statute is reproduced under for ease of reference:

> ***Section 114AA of the Customs Act, 1962***:
>
> *"114AA. Penalty for use of false and incorrect material.—If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."*

17.6.4 I find that the noticee in spite of being fully aware of the products imported, deliberately declared the wrong Sr. No. of the IGST Notification and claimed lower rate of IGST on the imported goods at the time of filing the said Bill of Entry in order to evade customs duty. Further, I find that they have failed to declare the actual details to the Customs Authorities for assessment. Thus, I find that the noticee has deliberately withheld from disclosing to the Department, the true classification and value as discussed in foregoing paras.

17.6.5 I find that the importer had knowingly or intentionally used false and incorrect information/ documents for importing the aforesaid goods and therefore, the importer had knowingly caused to made, signed or used, the declaration, and documents presented for import which were false or incorrect as discussed supra, in the transaction of their business for the purposes of Customs Act 1962, I hold the importer M/s. Havmor liable to penalty under Section 114AA of the Customs Act, 1962. Further, to fortify my stand on applicability of Penalty under Section 114AA of the Customs Act, 1962, I rely on the decision of Principal Bench, New Delhi in case of ***PRINCIPAL COMMISSIONER OF CUSTOMS, NEW DELHI (IMPORT) VS. GLOBAL TECHNOLOGIES & RESEARCH (2023)4 CENTAX 123 (TRI. DELHI)*** wherein it has been held that *"Since the importer had made false declarations in the Bill of Entry, penalty was also correctly imposed under Section 114AA by the original authority".*

17.6.6 Penalty under Section 117 of the Customs Act, 1962: I also find that during inquiry, multiple letters were issued to M/s Havmor. to produce required documents, however they did not respond to any of them. Therefore, I find that the importer has contravened the provisions of Customs Act and other allied acts and I hold them liable for penalty under Section 117 of the Customs Act, 1962, wherein it provides that *"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."*

17.7 I also find that the ratio of case laws cited by the noticee in their submission are not squarely applicable in this case.

ORDER

18. Thus, from discussions in para supra I pass the following order -

a) I deny the benefit of exemption of IGST@12% as per serial number 101 of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 claimed by M/s. Havmor Ice Cream Private Limited on the import of impugned goods as mentioned in Annexure-A to the Show Cause Notice;

b) I order to re-assess the Bills of Entry as mentioned in Annexure-A of the Show Cause Notice under S. No. 453 of Schedule – III of Notification No. 1/2017-Integrated Tax (Rate) dated 28.06.2017 with IGST @ 18%;

c) I confirm the demand of differential Customs Duty of **Rs. 42,75,920/- (Rupees Forty-Two Lakh Seventy-Five Thousand Nine Hundred Twenty Only)** as per Annexure-A and order to recover the same from M/s. Havmor Ice Cream Private Limited in terms of the provisions of Section 28(4) of the Customs Act, 1962;

d) I order to charge and recover interest at the applicable rate in terms of under Section 28AA of the Customs Act, 1962 on the above confirmed demand at (c) above from M/s. Havmor Ice Cream Private Limited;

e) I hold the subject goods having assessable value of **Rs. 6,42,03,010/- (Rupees Six Crores Forty-Two Lakh Three Thousand Ten Only)** imported by M/s. Havmor Ice Cream Private Limited, liable to confiscation under Section 111(m) of the Customs Act, 1962. However, I give them the option to redeem the goods on payment of Fine of **Rs, 75,00,000/- (Rupees Seventy Five Lakhs Only)** under Section 125 of the Customs Act, 1962;

f) I impose a penalty of **Rs. 42,75,920/- (Rupees Forty-Two Lakh Seventy-Five Thousand Nine Hundred Twenty Only) plus penalty**

equal to the applicable interest under Section 28AA of the Customs Act, 1962 payable on the Duty demanded on M/s. Havmor Ice Cream Private Limited and confirmed at (c) above under Section 114A of the Customs Act, 1962. However, in view of the first and second proviso to Section 114A of the Customs Act, 1962, if the amount of Customs Duty confirmed and interest thereon is paid within a period of thirty days from the date of the communication of this Order, the penalty shall be twenty five percent of the Duty, subject to the condition that the amount of such reduced penalty is also paid within the said period of thirty days;

g) I refrain from imposing penalty on M/s. Havmor Ice Cream Private Limited under Section 112 (a)(ii) of the Customs Act, 1962 in view of the proviso to section 114A of Customs Act, 1962;

h) I impose penalty of **Rs. 1,00,00,000/- (Rupees One Crore Only)** on M/s. Havmor Ice Cream Private Limited under Section 114AA of the Customs Act, 1962;

i) I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakhs Only)** on M/s. Havmor Ice Cream Private Limited under Section 117 of the Customs Act, 1962;

19. The Show Cause Notice bearing No. VIII/10-128/ICD-Khodiyar/O&A/ HQ/2024-25 Dated 21.10.2024 is disposed of in above terms.

Digitally signed by Shravan Ram
Date: 23-06-2025 18:29:39

(SHRAVAN RAM)
Additional Commissioner
Customs Ahmedabad

DIN: 20250671MN00008.9099
F. No. VIII/10-128/ICD-Khod/O&A/HQ/2024-25 **Date: 23.06.2025**

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To,
M/s. **HAVMOR ICE CREAM PRIVATE LIMITED**,
2ND FLOOR, COMMERCE HOUSE-IV, BESIDE SHELL PETROL PUMP,
OPP. SHIVALIK, 100 FEET ROAD, PRAHLAD NAGAR, SATELITE,
AHMEDABAD – 380 015, GUJARAT.

Copy to:

(i) The Commissioner of Customs, Ahmedabad [Kind Attn. The Assistant Commissioner (RRA), Customs, Ahmedabad]
(ii) The Deputy Commissioner, Customs, ICD-Khodiyar.
(iii) The Deputy Commissioner, Customs (Task Force), Ahmedabad.
(iv) The System-In-charge, Customs HQ, Ahmedabad for uploading on the official web-site.
(v) Guard File