

Outward No. 9548

 <p>सीमा शुल्क एवं कानूनी उपचार संस्थान GOVERNMENT OF INDIA सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: group2-mundra@gov.in</p>	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421 PHONE:02838-271426/271423 FAX:02838-271425 Email: group2-mundra@gov.in</p>	 <p>आजादी का अमृत महोत्सव</p>
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DIN: 20250171MO0000888EB6

Date 24-01-2025

SHOW CAUSE NOTICE

ISSUED UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962.

M/s. VIKRAMS WORLD, 90/1,CHOPRA MARKET, JAIL GALI, , RAVI DASS ROAD, HALL BAZAR, AMRITSAR PUNJAB, 143001 (IEC-1207000108) (hereinafter referred to as “the importer” for the sake of brevity) filed various Bills of Entry at Mundra Port for clearance of “Stock lot of printed/unprinted plastic packaging material/rolls mix size mix micron”, “Stock lot of plastic packaging material in mix size and gsm”, “Leftover stock lot of plastic packaging film/rolls in variable/mix size and gsm”, etc., classifying the same under different CTH 39201099, 39202090, 39206919 & 39207119 of the First Schedule of the Customs Tariff Act, 1975.

2. Whereas, during the course of Post Clearance Audit of the Bills of Entry filed by the importer for the period from 2020 to 2023, it has been noticed that the importer had mis-classified the goods under different CTH 39201099, 39202090, 39206919 & 39207119 and paid duty @ **30.980%** (BCD @ 10% + SWS @ 10% + IGST @ 18%) instead of the correct classification under CTH 39209999, which attracts a duty @ **37.470%** (BCD @ 15% + SWS @ 10% + IGST @ 18%).

The Heading 3920 of Customs Tariff is reproduced below:

<i>HS Code</i>	<i>Item Description</i>	<i>BCD</i>	<i>SWS (10% of BCD)</i>	<i>IGST</i>
3920	<i>Other plates, sheets, film, foil and strip of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials</i>			
392010	- <i>Of polymers of ethylene</i>			

39201099	-	<i>Other</i>	10%	1	18%
392020	-	<i>Of polymers of propylene</i>			
39202090	-	<i>Others</i>	10%	1	18%
392069	-	<i>Of other polyesters</i>			
39206919	-	<i>Others</i>	10%	1	18%
392071	-	<i>Of regenerated cellulose</i>			
39207119	-	<i>Others</i>	10%	1	18%
392099	-	<i>Of other plastics:</i>			
39209999	--	<i>Other</i>	15%	1.5	18%

3. During the audit, it is observed that the importer failed to provide specific descriptions of the goods, such as sheet, film, plates, strip, or foil, and the specific composition of plastic, including polymer of ethylene, propylene, other polyesters, cellulose, or its chemical derivatives. Instead, they declared a generic description of the goods as 'Stock Lot of Plastic Packaging Material in mix size and gsm.' Consequently, the goods were misclassified under Sub-Headings 392010, 392020, 392069, and 392071, which is completely not in consonance with Rule 3 of General Rules for the interpretation of Import Tariff.

4. Rule 3 of General Rules for the Interpretation of Import Tariff which is reproduced as under:-

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them

their essential character, in so far as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Pursuant to the aforementioned rule, when goods are classifiable under two or more headings and cannot be specifically classified, they shall be classified under the heading that occurs last in numerical order

5. Whereas, in the instant case, the description of goods is excessively generic in nature and cannot be classified under any specific heading as declared by the importer. Consequently, the goods can only be classified under the last relevant CTH, i.e., 39209999, pertaining to 'other' plastic materials, as they do not fit within any specific heading.

6. Thus, the importer had wrongly classified the goods under CTH 39201099, 39202090, 39206919, and 39207119, resulting in the underpayment of Basic Customs Duty (BCD) at 10% instead of the applicable rate of 15%. This misclassification appears to have been made deliberately in an attempt to evade payment of the differential BCD of 5% and SWS & IGST thereon. Therefore, the importer is liable for payment of an additional duty of Rs. 2,71,435/-, as detailed in Annexure-A.

7. RELEVANT LEGAL PROVISIONS

Provisions of Customs Act, 1962

i. In terms of section 28(1) of the Customs Act, 1962, where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason of collusions or any wilful mis-statement or suppression of facts,-

(a). the proper officer shall, within two years from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been 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:

PROVIDED that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed.

(b). the person chargeable with the duty or interest, may pay, before service of notice under clause (a) on the basis of,-

- (i) his own ascertainment of such duty; or
- (ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid:

PROVIDED that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

ii. *In terms of section 28(4) of the Customs Act, 1962, 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, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

- a. collusion; or
- b. any wilful 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.

iii. *In terms of section 28(5) of the Customs Act, 1962, where the duty has not been levied or not paid or has been short-levied or short-paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.*

iv. *In terms of section 28AA(1) of the Customs Act, 1962, 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.*

v. In terms of section 46(4) of the Customs Act, 1962, the importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

vi. In terms of section 46(4A) of the Customs Act, 1962, the importer who presents a bill of entry shall ensure the following, namely:—

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

vii. In terms of section 111 of the Customs Act, 1962- Confiscation of improperly imported goods, etc.-

The following goods brought from a place outside India 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

viii. In terms of section 112 of the Customs Act, 1962: - Penalty for improper importation of goods, etc.-

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
- b. who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable to penalty...

(ii) In the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded or five thousand rupees, whichever is the higher:

....

ix. *In terms of section 114 of the Customs Act, 1962:*

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, the person who is liable to pay the duty or interest, as the case may be, as determined under 3 [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

.....

8. In view of the discussions made in the foregoing paras, it appears that the importer had wrongly classified the imported goods under various CTH 39201099, 39202090, 39206919 & 39207119 and paid Customs duty at a lower rate of 30.980% (BCD @ 10% + SWS @ 10% + IGST @ 18%), instead of the applicable rate of 37.470% (BCD @ 15% + SWS @ 10% + IGST @ 18%) as per the correct classification under CTH 39209999. This misclassification appears to be a deliberate attempt by the importer to pay Customs duty at a lower rate.

9. Now, therefore, **M/s. . VIKRAMS WORLD, 90/1, CHOPRA MARKET, JAIL GALI, RAVI DASS ROAD, HALL BAZAR, AMRITSAR PUNJAB, 143001** (IEC-1207000108), is hereby, called upon to show cause to **the Additional Commissioner of Customs (Adjudication)**, Custom House, Mundra having office at 5B, PUB Building, Adani Port, Mundra, as to why:

- i. The assessment in respect of Bills of Entry as mentioned in **Annexure-A** should not be rejected and the same should not be re-assessed under CTH 39209999;
- ii. The short payment of Basic Customs Duty amounting to **Rs. 2,71,435/-** (Rupees Two Lakhs Seventy One Thousand Four Hundred and Thirty Four only) by wrongly classifying the imported goods under CTH 39201099, 39202090, 39206919 & 39207119 instead of 39209999 and paid less BCD and SWS/IGST thereon should not be charged and recovered from them under Section 28(4) of the Customs Act, 1962;
- iii. Interest should not be recovered from them under Section 28AA of the Customs Act, 1962;
- iv. The impugned goods should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962, for short levy of duty by reason of wilful mis-statement and suppression of facts;
- v. Penalty should not be imposed upon them under the provisions of Section 112 or 114A of the Customs Act, 1962, for rendering imported goods liable

for confiscation under Section 111(m) of the Customs Act, 1962;

10. The importer should tender all evidences on which they intend to rely upon in original, along with their reply to this notice. They should also mention in their reply as to whether they would like to be heard in person or through their legal representative or via video conferencing, before the case is adjudicated so that a suitable date may be fixed for personal hearing.

11. The Importer may note that if no reply to this Show Cause Notice is received within 30 days of the receipt of this show cause notice or if they or their authorized representative do not appear on the date fixed for hearing, the case shall be decided ex-parte on the basis of evidence available on record without making any further reference to them in the matter.

12. This show cause notice is being issued under Section 28 (4) of the Customs Act, 1962 without prejudice to any other action that may be taken against them or any other person whether named hereinabove or not, under the provisions of the Customs Act, 1962 or under any other law for the time being in force.

13. The department reserves the right to add, alter, amend, modify or supplement this notice at any time on the basis of any evidence, or material facts related to the import of goods under investigation and any other importer by the said exporter, which may come to the notice of the department after issuance of this notice and prior to the adjudication of the case.

Encl: Annexure-A

AMIT KUMAR MISHRA
Additional Commissioner (Import)
Custom House, Mundra

To,

**M/s. VIKRAMS WORLD,
90/1, CHOPRA MARKET, JAIL GALI,
RAVI DASS ROAD, HALL BAZAR,
AMRITSAR PUNJAB, 143001.**

Copy to:-

1. The Additional Commissioner (Adjudication), Custom House, Mundra for adjudication please.
2. The Dy./Asstt. Commissioner (PCA), Custom House, Mundra.
3. Guard file