

	<b>सीमा शुल्क के आयुक्त का कार्यालय</b> <b>सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात</b> <b>OFFICE OF THE COMMISSIONER OF CUSTOMS</b> <b>CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT</b> <u>Phone No.02838-271165/66/67/68 FAX.No.02838-271169/62,</u> <u>Email-adj-mundra@gov.in</u>	
<b>A. File No.</b>	:	GEN/ADJ/COMM/754/2023-Adjn-O/o Pr. Commr- Cus-Mundra
<b>B. Order-in-Original No.</b>	:	<b>MUN-CUSTM-000-COM-017-25-26</b>
<b>C. Passed by</b>	:	<b>Nitin Saini, Commissioner of Customs, Customs House, AP &amp; SEZ, Mundra.</b>
<b>D. Date of order and Date of issue:</b>	:	29.07.2025 29.07.2025
<b>E. SCN No. &amp; Date</b>	:	SCN F. No. GEN/ADJ/COMM/754/2023-Adjn-O/o Pr. Commr-Cus-Mundra, dated 06.08.2024.
<b>F. Noticee(s) / Party / Importer</b>	:	M/s. Sicer Inkera Pvt. Ltd. (IEC: 0806007265), 201, Somnath Chamber, Near Adarsh Hotel, NH-8A, Morbi-363642, Gujarat
<b>G. DIN</b>	:	<b>20250771MO000000FA83</b>

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2<sup>nd</sup> फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”

“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2<sup>nd</sup> floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ - / 1000रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो 5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ झूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal 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.

## **1. BRIEF FACTS OF THE CASE**

This adjudication arises out of the Demand-cum-Show Cause Notice (SCN) issued to M/s. Sicer Inkera Pvt. Ltd. (hereinafter referred to as "the Noticee"), alleging misclassification and wrongful availing of concessional Basic Customs Duty (BCD) @5% under Sl. No. 236 of Notification No. 50/2017-Cus. dated 30.06.2017 for goods imported under CTH 32074000, which were alleged to be classifiable instead under CTH 32072010, attracting BCD @7.5%.

**2.** The Directorate General of Analytics and Risk Management (DGARM), Mumbai, conducted an analytical study, vide Analytics Report – 19/2021-22, which found that the imported goods such as:

- Transparent Hi-Resistance Microgrit Grit
- Transparent Glossy Polishable Grit
- Transparent High-Resistance Microgrit
- Transparent Monoporosa Frit

were incorrectly classified under CTH 32074000 as "Glass frit and other glass in the form of powder, granules or flakes", while the nature of goods more appropriately corresponds to "Vitrifiable enamels and glazes", falling under CTH 32072010. The tariff heading of 3207 inter alia covers "Glass Frit And Other Glass, in The Form of Powder, Granules Or Flakes". Hence, it is implied that "Vitrifiable enamels and glazes", which are generally in the form of powders or granules, are excluded from tariff item-32074000, as such goods are specifically falling under tariff item 32072010, eventually do not appear to be eligible for the benefit of concessional rate of Basic Customs duty under Entry/Sr.No. 236 of Notification No. 50/2017-Customs dated 30-06-2017. Therefore, it appeared that the importer has wrongly taken benefit of concessional rate of Basic Customs duty under Entry/Sr.No. 236 of Notification no. 50/2017-Customs dated 30.06.2017, by misclassifying the said imported goods under CTH 32074000, instead of correct classification 32072010.

**2.1** It was observed that in several cases, "*Glazed materials or compounds*" have been incorrectly classified under tariff item 32074000, enabling to claim inadmissible concessional BCD rate @ 5%, instead of classifying under CTH-32072010 which attracts BCD @ 7.5%.

**2.2** Whereas, the Importer has cleared for home consumption the goods viz. "Glazed Compounds" on the payment of Basic Customs Duty @ 5% against Sr.No. 236 of Notification No.50/2017-Customs dated 30-06-2017. The said Importer was required to be correctly classify the goods in question under CTH 32072010 and discharge the Basic Customs Duty @ 7.5% Adv. As per the Notice, the Noticee imported such goods by misclassification, through 100 Bills of Entry between 03.09.2019 and 11.05.2021, causing short payment of total differential duty of Rs. 50,09,368/- (as detailed in Table in Para 7 of the Notice).

**2.3** The notice also quoted various applicable legal provisions, which are listed as under -

- A. Serial No. 236 of Customs Notification No. 50/2017-Cus dated 30-06-2017;

- B. The Customs Tariff Act, 1975.
- C. Section 46 of the Customs Act, 1962, which provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the Importer to declare truthfully, all contents in the Bill of Entry.
- D. Section 28 (4) of the Customs Act, 1962, which 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, which provides for recovery of interest on delayed payment of duty. -
- F. Section 114A of the Customs Act, 1962, which deals with levy of penalty by reason of collusion or any willful mis-statement or suppression of facts.

**2.4** It appeared that the Importer had willfully mis-stated the facts & wrongly availed Customs duty on lower side by categorizing their goods under CTH 3207400 along with the benefit of Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017, since, it prescribes a concessional rate of Basic Customs Duty of 5% Adv. Whereas, the CTH 32072010 having the classification of “Vitrifiable enamels and glaziers” which appeared to be apt classification for the imported goods as detailed above and also appeared to be polishing materials thus, not eligible for any concessional rate of duty.

**3.** In the light of the above documentary and circumstantial evidences, it appeared that a well thought out conspiracy was hatched by the Importer to defraud the exchequer by adopting the modus operandi of mis-declaring the goods under CTH 32074000 for availing the benefit of concessional rate of BCD under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017.

**3.1** It further appeared that the Importer/Noticee was in complete knowledge of the correct nature of the goods, nevertheless they claimed undue notification benefit for the said goods in order to clear the goods by wrongly availing the concessional rate of Basic Customs Duty under Serial No. 236 of Notification No. 50/2017-Customs dated 30-06-2017, which is on a lower side, and thereby evaded duty amounting to **Rs. 50,09,368/-**. Further, after introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith has been bestowed on the Importers, as the responsibility has been entrusted upon them to correctly self-assess the duty themselves. However, in the instance case, the Importer intentionally abused this faith placed upon them. Therefore, it appeared that the Importer has wilfully violated the provisions of Section 17(1) of the Act in as much as Importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-Section (4)

and (4A) of Section 46 of the Act ibid. Therefore, the goods having assessable value of **Rs. 9,54,63,422/-** as detailed herein above, appeared liable for confiscation under Section 111(m) of the Customs Act, 1962.

**3.2** It further appeared that the Importer wilfully claimed undue notifications benefit for the impugned goods resulting into short levy of duty of **Rs. 50,09,368/-**, which appeared recoverable from the Importer under the provisions of Section 28(4) of the Customs Act, 1962, along with interest as applicable under Section 28AA of the Act. For such act of omission and commission, the Importer also appeared to have rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

**4.** In view of above, a notice was issued to **M/s. Sicer Inkera Pvt. Ltd.**, 201, Somnath Chamber, Near Adarsh Hotel, NH-8A, Morbi-363642, Gujarat, asking them to show cause to the **Commissioner of Customs**, Custom House, Mundra, as to why:-

- (i) The goods having assessable value of **Rs. 9,54,63,422/-** covered under Bills of Entry as detailed herein above, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (ii) The differential duty worked out to **Rs. 50,09,368/- (Rupees Fifty Lakhs Forty-Nine Thousand Three Hundred Sixty-Eight Only)** for Bills of Entry as detailed herein above, should not be recovered under Section 28 (4) of the Customs Act, 1962 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962, as applicable.
- (iii) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

**4.1** The Importer was further asked to submit their defence reply, if any, within 30 days from the date of receipt of the notice and appear for personal hearing when the case is posted for hearing, failing which the case will be decided ex-parte on the basis of evidences available on record.

## **5. Personal hearings**

**5.1** I observe that 'Audi alteram partem', is an important principle of natural justice that dictates to hear the other side before passing any order/judgment. Therefore, personal hearings in the matter were granted to the noticee on 10.06.2025, 24.06.2025 and 08.07.2025. The letters granting these personal hearings were sent to the noticee via Speed Post as well as through officially registered email addresses. Despite the above opportunities, the noticee neither appeared for any of the scheduled hearings, nor submitted any written communication seeking adjournment or indicating their intention to present oral arguments.

## **6. Defence submission**

**6.1** It is observed from the case records that the Show Cause Notice (SCN) was duly served upon the Noticee. However, despite the lapse of a considerable period of almost one year from the date of issuance of the SCN, no reply or defence submission has been received from the Noticee. Further, the Noticee did not avail of the opportunity of personal hearing, despite being granted sufficient and reasonable opportunities in accordance with the principles of natural justice. Therefore, I am left with no option but to proceed to adjudicate the matter ex parte, based on the facts of the case, evidences on record, and material gathered during the course of investigation. The Hon'ble Supreme

Court in **Union of India v. Jesus Sales Corporation [1996 (83) E.L.T. 486 (S.C.)]** has held that where reasonable opportunities have been provided and the noticee fails to avail them, the adjudicating authority is justified in proceeding ex parte.

## 7. Discussion and Findings

I have carefully gone through the SCN bearing F.No. GEN/ADJ/COMM/754/2023-Adjn, dated 06.08.2024 issued by the Commissioner of Customs, Custom House, Mundra, facts of the case, the relied upon documents, submissions made by the Noticees, relevant legal provisions and the records available before me. The issues before me to decide are as under:

- (i) Whether the goods were misclassified under CTH 32074000 instead of 32072010, leading to wrongful availment of concessional BCD, by taking benefit of Sr. no. 236 of Notification no. 50/2017-Customs dated 30.06.2017;
- (ii) Whether the goods having assessable value of Rs. 9,54,63,422/- covered under Bills of Entry as detailed in Notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962;
- (iii) Whether differential duty amounting to Rs. 50,09,368/- (Rupees Fifty Lakhs Forty-Nine Thousand Three Hundred Sixty-Eight Only) for Bills of Entry as detailed in the show cause notice is required to be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon as per Section 28AA of the Customs Act, 1962;
- (iv) Whether penalty is liable to be imposed upon them under Section 114A of the Customs Act, 1962.

**8.** I find that the instant case arises from the alleged misclassification and consequent wrongful availment of concessional Basic Customs Duty (BCD) at 5% under Sl. No. 236 of Notification No. 50/2017-Cus. dated 30.06.2017, by M/s Sicer Inkera Pvt. Ltd. The imports were declared under Customs Tariff Heading (CTH) 32074000, whereas, based on the nature and description of goods, they are correctly classifiable under CTH 32072010, which attracts BCD at 7.5% ad valorem. CTH 32074000 covers, inter alia, "Glass frit and other glass, in the form of powder, granules or flakes". The complete structure of Heading 3207, relevant to this case, is as follows:

3207	Prepared Pigments, Prepared Opacifiers And Prepared Colours, Vitrifiable Enamels And Glazes, Engobes (slips), Liquid Lustres And Similar Preparations, Of A Kind Used In The Ceramic Enamelling Or Glass Industry; Glass Frit And Other Glass, In The Form Of Powder, Granules or Flakes
3207 20	Vitrifiable enamels and glazes, engobes (slips) and similar preparations :
3207 20 10	Vitrifiable enamels and glazes
3207 40 00	Glass frit and other glass, in the form of powder, granules or flakes

From the above, I find that tariff heading of 3207 inter alia covers “Glass Frit and Other Glass, in the form of Powder, Granules Or Flakes”.

**8.1** As per Entry No. 236 of Notification No. 50/2017-Cus., “all goods” under CTH 32074000 are eligible for concessional BCD at 5%:

S. No.	Chapter or heading or sub-heading or tariff item	Description of goods	Standard rate	Integrated Goods and Services Tax	Condition No.
236	3207 40 00	All goods	5%	--	--

**8.2** Since the dispute concerns classification, I examined the HSN Explanatory Notes relevant to Heading 3207. They describe five categories of goods. The relevant extracts are:

*“This heading covers a range of preparations used in the ceramic industry (china, earthenware, etc.), in the glass industry or for colouring or finishing metal articles.*

- (1) *Prepared pigments, prepared opacifiers and prepared colours are dry mixtures formed by the heat treatment of oxides (of antimony, silver, arsenic, copper, chromium, cobalt, etc.) or salts (fluorides, phosphates, etc.) with or without fluxes or other substances, and are fired at high temperatures, generally above 300 °C, after application. The goods are used to produce a coloured or opaque surface in the course of ceramic firing. They may be incorporated in the glaze or enamel, or be applied as a coating before glazing.*
- (2) *Vitrifiable enamels and glazes are mixtures of silica with other products (feldspar, kaolin, alkalies, sodium carbonate, alkaline-earth metal compounds, lead oxide, boric acid, etc.) giving a smooth surface, either matt or glossy, by vitrification under heat. In most cases some of the constituents have been fused together in a preliminary process and are present in the mixture in the form of powdered frit (see below). They may be transparent (whether or not coloured) or rendered opaque by the addition of opacifiers or pigments; sometimes substances (e.g., titanium or zinc oxides) are added which produce decorative crystalline effects on cooling after the firing. These vitrifiable enamels and glazes are generally in the form of powders or granules.*
- (3) *Engobes (slips) are semi-fluid pastes with a basis of clay, whether or not coloured, used to coat ceramic ware, either completely or in the form of a pattern. They are applied either before firing or after a preliminary first firing.*
- (4) *Liquid lustres are solutions or suspensions of metal compounds in spirits of turpentine or other organic solvents, used for decorating ceramics or glassware. The most widely used are gold, silver, aluminium or chromium lustres.*
- (5) *Glass frit and all other varieties of glass (including vitrite and glass obtained from fused quartz or other fused silica) in the form of powder, granules or flakes, whether or not coloured or silvered.”*
  - i. “Transparent Hi-Resistance Microgrit Grit”;
  - ii. “Transparent Glossy Polishable Grit”;
  - iii. “Transparent High-Resistance Microgrit” and;

iv. "Transparent Monoporosa Frit".

**8.2.1** From the above, it is evident that "Vitrifiable enamels and glazes" as per point (2), though containing frit, are composite preparations—generally in the form of powders or granules—made by mixing frit with other materials such as opacifiers, pigments, or binders. These products are distinct from "glass frit" in its raw form, as covered under point (5).

**8.3** I observed from the data analysis report carried out by the Directorate General of Analytics and Risk Management, National Customs Targeting Centre, Mumbai that the goods described as "Glazed Compounds" are clearly covered under CTH 32072010, which pertains to "Vitrifiable enamels and glazes." On the other hand, CTH 32074000 pertains to "Glass frit and other glass, in the form of powder, granules or flakes." I observe that vitrifiable enamels and glazes, although often in powder or granule form, are distinct chemical compositions, which are separately and specifically classified under 32072010. Therefore, such goods are excluded from CTH 32074000, and accordingly not eligible for the concessional rate of BCD under Entry 236 of Notification No. 50/2017-Customs.

**8.4** I observed from the data analysis report carried out by the Directorate General of Analytics and Risk Management, National Customs Targeting Centre, Mumbai that the importer cleared the goods, described as "Glazed Compounds," for home consumption while claiming BCD @5% under Notification No. 50/2017-Customs against Sl. No. 236. The importer was duty-bound to correctly classify the said goods under CTH 32072010 and discharge BCD @7.5%. However, by declaring them under CTH 32074000, the importer fraudulently availed the concessional rate and thereby evaded the following amount of duty:

S. No.	Bill of Entry		Assessed Value	Total Duty Assessed	Total Duty payable	Diff/ Short payment of duty
	No.	Date				
1	7724798	22-05-2020	2616708	640832	725744	84912
2	5564840	05-11-2019	2497732	611695	692746	81051
3	5564832	05-11-2019	2497732	611695	692746	81051
4	5564831	05-11-2019	2497732	611695	692746	81051
5	8955573	26-09-2020	2155853	420176	597926	177750
6	7867047	09-06-2020	2154392	419891	597521	177630
7	6594472	23-01-2020	2131707	415470	591229	175759
8	8880380	19-09-2020	1995307	388885	553398	164513
9	8880034	19-09-2020	1995307	388885	553398	164513
10	7126770	05-03-2020	1955277	381084	542296	161212
11	7700724	19-05-2020	1917589	469617	531843	62226
12	2624190	04-02-2021	1897251	464637	526203	61566
13	6959864	20-02-2020	1882568	366912	522130	155218
14	6228915	25-12-2019	1817517	445110	504088	58978
15	9219332	17-10-2020	1811584	443657	502443	58786
16	5564840	05-11-2019	1659637	315165	460300	145135
17	8955573	26-09-2020	1519078	296068	421316	125248
18	9365815	29-10-2020	1448838	354821	401835	47014
19	3912059	11-05-2021	1265953	310032	351112	41080
20	4905768	14-09-2019	1264463	309667	350699	41032
21	4755945	03-09-2019	1259239	239130	349250	110120
22	4834544	09-09-2019	1258383	238967	349013	110046
23	4834544	09-09-2019	1258383	238967	349013	110046
24	4755945	03-09-2019	1258383	238967	349013	110046
25	4905768	14-09-2019	1252654	306775	347424	40649
26	4905768	14-09-2019	1252654	306775	347424	40649

27	5402396	22-10-2019	1250328	306205	346778	40573
28	5402396	22-10-2019	1250328	306205	346778	40573
29	5402396	22-10-2019	1250328	306205	346778	40573
30	5402396	22-10-2019	1250328	306205	346778	40573
31	4482340	13-08-2019	1242482	304284	344602	40318
32	5402396	22-10-2019	1233272	302028	342048	40020
33	4834544	09-09-2019	1173357	222821	325431	102610
34	4834544	09-09-2019	1173357	222821	325431	102610
35	4755945	03-09-2019	1173357	222821	325431	102610
36	4905768	14-09-2019	1168015	286047	323949	37902
37	4905768	14-09-2019	1168015	286047	323949	37902
38	5402396	22-10-2019	1165847	285516	323348	37832
39	5402396	22-10-2019	1165847	285516	323348	37832
40	5402396	22-10-2019	1165847	285516	323348	37832
41	5402396	22-10-2019	1165847	285516	323348	37832
42	7928891	17-06-2020	1163245	226716	322626	95910
43	4482340	13-08-2019	1158530	283724	321318	37594
44	4482340	13-08-2019	1151411	281981	319344	37363
45	4482340	13-08-2019	1111362	272173	308236	36063
46	2426372	20-01-2021	1095487	268285	303833	35548
47	2426372	20-01-2021	1085617	265868	301096	35228
48	4755945	03-09-2019	1056740	200675	293087	92412
49	9645827	20-11-2020	1043795	255626	289497	33871
50	6594472	23-01-2020	969596	188974	268917	79943
51	7928891	17-06-2020	856739	166979	237617	70638
52	9464164	05-11-2020	843562	206588	233962	27374
53	5564840	05-11-2019	838095	205250	232446	27196
54	7893867	12-06-2020	800026	155925	221887	65962
55	4905768	14-09-2019	788148	193017	218593	25576
56	2055793	21-12-2020	746125	182726	206938	24212
57	5932131	03-12-2019	742792	181910	206013	24103
58	9464164	05-11-2020	712218	174422	197534	23112
59	8880380	19-09-2020	693101	135085	192232	57147
60	8880380	19-09-2020	693101	135085	192232	57147
61	8880034	19-09-2020	693101	135085	192232	57147
62	8880380	19-09-2020	689864	134454	191334	56880
63	3659676	22-04-2021	622818	152528	172739	20211
64	7700724	19-05-2020	620657	151999	172139	20140
65	7724798	22-05-2020	589449	144356	163484	19128
66	6594472	23-01-2020	561345	109406	155689	46283
67	7893867	12-06-2020	552399	107663	153208	45545
68	6594472	23-01-2020	535829	104433	148612	44179
69	6228915	25-12-2019	492435	120597	136577	15980
70	5932131	03-12-2019	480975	117791	133398	15607
71	8880034	19-09-2020	459277	89513	127380	37867
72	2895009	24-02-2021	423133	103625	117356	13731
73	3912059	11-05-2021	418183	102413	115983	13570
74	9464164	05-11-2020	406982	99670	112876	13206
75	7126770	05-03-2020	405276	78988	112403	33415
76	5402396	22-10-2019	369982	90609	102615	12006
77	5402396	22-10-2019	344983	84486	95681	11195
78	2055793	21-12-2020	319768	78311	88688	10377
79	7724798	22-05-2020	318621	78030	88370	10340
80	8955573	26-09-2020	299818	58435	83155	24720
81	7724807	22-05-2020	288506	70655	80017	9362

82	3912059	11-05-2021	283224	69362	78552	9190
83	7893867	12-06-2020	274295	53460	76076	22616
84	7700724	19-05-2020	269439	65986	74729	8743
85	7724807	22-05-2020	255315	62527	70812	8285
86	7724798	22-05-2020	249025	60986	69067	8081
87	7724798	22-05-2020	214273	52476	59429	6953
88	8880034	19-09-2020	209942	40918	58227	17309
89	7700724	19-05-2020	208195	50987	57743	6756
90	9365815	29-10-2020	206977	50689	57405	6716
91	2721516	11-02-2021	204719	50136	56779	6643
92	9365815	29-10-2020	199715	48910	55391	6481
93	5932131	03-12-2019	171478	41995	47559	5564
94	7724807	22-05-2020	127977	31341	35494	4153
95	7724798	22-05-2020	126226	30913	35009	4096
96	7700724	19-05-2020	115128	28195	31931	3736
97	9219332	17-10-2020	102825	25182	28519	3337
98	7126770	05-03-2020	95986	18708	26622	7914
99	7724807	22-05-2020	95743	23448	26554	3106
100	8955573	26-09-2020	91373	17809	25342	7533
	<b>TOTAL</b>		<b>95463422</b>	<b>21467412</b>	<b>26476780</b>	<b>5009368</b>

The total short payment of duty is Rs. 50,09,368/-, against the total assessable value of Rs. 9,54,63,422/-.

**8.5** From the above facts and evidences available on record, it is evident that the importer has willfully mis-stated the classification of the imported goods and fraudulently availed the benefit of concessional rate of duty by declaring the goods under CTH 32074000. However, as per the nature and composition of the goods, they are correctly classifiable under CTH 32072010, which does not attract exemption under Notification No. 50/2017-Customs dated 30.06.2017. It is apparent that the importer was fully aware of the actual classification and nature of the goods but deliberately mis-declared the same with the intention to evade customs duty amounting to Rs. 50,09,368/-. Furthermore, despite being afforded sufficient opportunities, the Noticee failed to attend the scheduled personal hearings and did not submit any defence reply or written submissions in response to the Show Cause Notice. Such conduct on the part of the Noticee demonstrates clear intent to suppress material facts and mis-declare the goods with mala fide intent. Accordingly, the allegations made in the Show Cause Notice stand confirmed.

**8.6** Post introduction of the self-assessment regime under Section 17 of the Customs Act, 1962, the law places the responsibility of correct self-assessment on the importer. With concurrent assessment and routine audits largely withdrawn, this system relies heavily on the bonafide conduct of importers. In the instant case, the importer abused this trust and willfully violated the provisions of Section 17(1) and Sections 46(4) and 46(4A) by mis-declaring the goods to evade duty. Accordingly, the goods valued at Rs. 9,54,63,422/- are liable for confiscation under Section 111(m) of the Customs Act, 1962. Since the goods are not physically available, I refrain from imposing any redemption fine. Furthermore, the short-paid duty of Rs. 50,09,368/- is recoverable under Section 28(4) of the Customs Act, 1962, and interest is mandatorily recoverable under Section 28AA of the Customs Act, 1962. Further, for such acts of mis-statement and suppression resulting into short payment of customs duty, the Importer has also rendered themselves liable to penalty under the provisions of Section 114A of the Customs Act, 1962.

**8.7** In support of the above findings, I place reliance on the following judicial pronouncements:

**(i) Commissioner of Customs v. Balaji Ceramic Products** – 2008 (229) ELT 286 (Tri.-Ahmd.): Classification must be based on nature and end-use. Misuse of concessional notification invites demand and penalty.

**(ii) Union of India v. Ind-Swift Laboratories Ltd.** – (2011) 4 SCC 635: Mens rea is not necessary for penalty under fiscal statutes where wilful misstatement or suppression of facts is established.

In view of the above findings and under the powers conferred upon me under the Customs Act, 1962, I pass the following Ex-Parte Order:

**ORDER**

1. I hold that the imported goods assessable value of Rs. 9,54,63,422/- covered under Bills of Entry as detailed herein above, are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, as the subject goods are not physically available, I refrain from imposing any redemption fine in the matter;
2. I confirm the demand of Customs differential duty worked out to Rs. 50,09,368/- (Rupees Fifty Lakhs Forty Nine Thousand Three Hundred Sixty Eight Only) for Bills of Entry as detailed herein above, against M/s Sicer Inkera Pvt. Ltd., under Section 28(4) of the Customs Act, 1962. I also order for recovery of applicable interest on the above amount under Section 28AA of the Customs Act, 1962.
3. I impose a penalty of Rs. 50,09,368/- (Rupees Fifty Lakhs Forty Nine Thousand Three Hundred Sixty Eight Only) under Section 114A of the Customs Act, 1962.

This order is being issued ex parte, in absence of any reply or representation by the Noticee, based on facts and documents available on record. It is issued without prejudice to any other legal proceedings, under the relevant provisions of the Customs Act, 1962 or other laws.

  
(Nitin Saini)  
Commissioner of Customs  
Custom House, Mundra

To:

M/s. Sicer Inkera Pvt. Ltd.  
201, Somnath Chamber, Near Adarsh Hotel,  
NH-8A, Morbi - 363642, Gujarat

**Copy to:-**

1. The Assistant Commissioner (Audit), Customs House, Mundra

- 2.** The Assistant Commissioner of Customs (RRA), CCO, Ahmedabad Zone;
- 3.** The Deputy /Assistant Commissioner (Recovery/TRC), Customs House, Mundra for necessary action;
- 4.** The Superintendent (EDI), Customs House, Mundra for uploading on Website;
- 5.** Notice Board /Guard File.