

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- importsectionmundra@gmail.com</p>
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DIN:

03-05-2024

Show-Cause-Notice**(Issued under section 28 of Customs Act, 1962)**

M/s. Vinayak Enterprise (IEC: BCNPS6855D), located at 5/6 Lati Plot, Morbi, Gujarat-363641 (hereinafter also referred to as “the Importer/the Noticee” for the sake of brevity”) had filed the Bill of Entry no. **9815617 dated 04.12.2020** through their **CB M/s. Dynamic Shipping and Logistics (BFTPP8249HCH002)** for importation of goods i.e. **‘PISTON PUMP’** by paying the IGST @5% (Schedule-I Sr. No.231). The details of said goods are as under:

Table-A

BE No. & Date	Item No.	Inv No.	Description of goods	Classification	Assess able value (in Rs.)	IGST Sr. No. (@5%)
9815617 dated 04.12.2020	11	01	PISTON PUMP	84136090	13928	I-231
9815617 dated 04.12.2020	10	01	PISTON PUMP	84136090	24841	I-231
9815617 dated 04.12.2020	30	01	PISTON PUMP	84136090	13281	I-231
9815617 dated 04.12.2020	31	01	PISTON PUMP	84136090	17676	I-231

2. An analysis of data (ANALYTICS REPORT – 03/2020-21) in respect of Import of goods classified under the sub-heading 8413 with regard to wrong claim of IGST rate @5% (Schedule-I, 231) instead of **IGST rate @ 18% applicable** for such goods under **Schedule-III, Sr.No.453** of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017, resulting in short levy of IGST, was carried out by the NCTC, Mumbai. Based on the

analysis, it is observed that as per entry 231 of Schedule-I (5%), refers certain specified goods, namely, Hand pumps and parts thereof, attract a lower IGST rate @ 5%. But importer **M/s. Vinayak Enterprise** imported the goods i.e. **PISTON PUMP** which is other than Hand pumps and parts thereof.

3. The said Importer had filed the Bills of Entry for home clearance of the goods (as mentioned in Table-A) under sub-heading 8413 of the first schedule of the Customs Tariff Act, 1975. The Importer discharged the tax of IGST @ 5% in terms of Serial No. 231 of Schedule-I of IGST Notification 01/2017-IGST(Rate).

4. The CTH – 8413 applies to “Pumps for liquids, whether or not fitted with a measuring device; Liquid Elevators”. Depending on the type of pump and its usage, the “Pumps” are further classified under 8-digit CTHs. The IGST rate applicable to the goods of CTH – 8413 is prescribed vide Notification No. 01/2017-Integrated Tax (Rate) dated 28/06/2017, as amended. The relevant entries of the rate of IGST under Schedule-I and Schedule-III of IGST Notification 01/2017-IGST(Rate) dated 28.06.2017 for Heading 8413 are reproduced as under:

Table-B

Sr. No. of Schedule of IGST Notification 01/2017	IGST Rate	Chapter/Tariff item as per Schedule	Description of goods
I-231	I (5%)	8413	Hand pumps and parts thereof;
III-453	III(18%)	Any Chapter	Goods which are not specified in Schedule I, II, IV, V or VI

5. From the above Table, it is apparent that except for “Hand Pumps and Parts thereof”, listed at serial no. 231 of Schedule-I of the said Notification, no other items of CTH – 8413 is entitled for IGST Rate of 5%.

Thus, “Description of Goods”, as declared by the importers in their BEs, as “Hand Pumps and Parts thereof” i.e. the items that are actually entitled to serial no. I – 231. It, therefore, appears that the imported goods i.e. **‘PISTON PUMP’** of CTH – **84136090** (not expressly falling under Schedule - I, i.e., other than “Hand pumps and parts thereof”), actually merit a levy of IGST at the rates specified in Schedule-III of Notification No. 01/2007 – Integrated Tax (Rate). The goods are liable to a higher IGST rate @ **18% under entry III-453 (18%)**.

6. Importer have been cleared said goods at a lower IGST @ 5% under the aforementioned serial number of Schedule I, instead of paying a higher IGST rate @ **18%** applicable for said goods under Schedule-III, **Sr.No.453** of Notification No.01/2017-Integrated Tax (Rate) dated 28.06.2017 (as amended). The short-levy of IGST @ 13% (i.e. 18% minus 5%) of goods classified under **84136090** are calculated as under:-

Table - C
(in Rs.)

BE No. & Date	Item No. of Invoice 01	Description of goods	Assessable value (in Rs.)	IGST paid (5%-I231)	IGST payable(18%-III453)	Short levied of IGST (18% minus 5%)
9815617 dated 04.12.2020	11	'PISTON PUMP'	13928	754	2695	1941
9815617 dated 04.12.2020	10	'PISTON PUMP'	24841	1345	4807	3462
9815617 dated 04.12.2020	30	'PISTON PUMP'	13281	719	2570	1851
9815617 dated 04.12.2020	31	'PISTON PUMP'	17676	957	3420	2464
Total			69725	3774	13492	9718

Hence, importer has short-levied **Rs. 9,718/-** as IGST.

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

- A. Section 46 of the Customs Act, 1962 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. Relevant portion of Section 46 (4) is reproduced below:-

“(i) 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”.

- B. Section 28 (4) of the Customs Act, 1962 provides that “Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice”.

- C. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

- D. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, as determined under sub-Section (8) of Section 28, and the interest payable thereon under Section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the duty or interest, as the case may be, so determined: Provided further that the benefit of reduced penalty under the first

proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

8. It appears that the importer has willfully mis-stated the facts & wrongly paid IGST on lower side by categorizing its goods under Serial No. 231 of Schedule-I of IGST Notification 01/2017-IGST(Rate) which prescribes IGST @ 5% whereas the goods attract IGST @ 18% under Serial No. **453** of Schedule-III of Notification No. 01/2007 – Integrated Tax (Rate).

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

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

9. In light of the documentary evidences, as brought out above and the legal provisions, it appears that the importer has willfully suppressed the facts and deliberately misclassified the imported goods with a malafide intention to evade the duty by wrongly taxing the said goods under Serial No. **231 of Schedule-I** of IGST Notification 01/2017-IGST(Rate) of the goods leading to short payment of customs duty.

10. Whereas, it is apparent that the importer/noticee was in complete knowledge of the correct nature of the goods nevertheless, the importer claimed undue notification benefit for the said goods in order to clear the goods by wrongly availed Customs duty on a lower side under Serial No. **231 of Schedule-I** of IGST Notification 01/2017-IGST(Rate) which prescribes IGST @ **5%**. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. Therefore, it appears 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-assess the impugned goods and has also willfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

11. As per Section 111(m) of the Customs Act, 1962, any goods which do

not correspond in respect of value or in any other particular with the entry made under the Customs Act, 1962 are liable for confiscation under the said Section

12. It appears that the importer willfully listed in a Schedule which did not pertain to the impugned goods resulting into short levy of duty. Further, it appears that in respect of the Bill of Entry as detailed in above Table-A, such wrong claim of notifications benefit on the part of the importer has resulted into short levy of duty of **Rs. 9,718/- (Rupees Nine Thousand Seven Hundred Eighteen Only)** which is recoverable from the importer under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with interest as applicable under Section 28AA of the Act read with Section 50 of the Central Goods and Service Tax Act, 2017. Also, the said goods totally valued at Rs.69,725/- imported under above-mentioned Bills of Entry appear to be liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962 in as much as the same have been imported by mis-declaring Sr No. 231 of Schedule-I in place of Sr. No. 453 of Schedule-III of the Notification No. 01/2017- IGST(Rate). For such act of omission and commission, the importer also appears to have rendered themselves liable to penalty under Section 114A / 112(a) of the Customs Act, 1962.

13. Now, therefore, **M/s. Vinayak Enterprise (IEC: BCNPS6855D), located at 5/6 Lati Plot, Morbi, Gujarat-363641** are hereby called upon to show cause to the **Assistant Commissioner of Customs, Group-V**, Custom House, Mundra, having office at Room No. 209 PUB Building, Mundra (Kutch) Gujarat 370 421, as to why:-

- i. the goods having assessable value of **Rs. 69,725/- (Rupees Sixty Nine Thousand Seven Hundred Twenty Five Only)** covered under Bill of Entry as detailed in above Table-A, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for the act of mis-declaring Sr No. 231 of Schedule-I in place of Sr. No. 453 of Schedule-III of the Notification No. 01/2017-IGST(Rate) dated 28.06.2017;
- ii. the Serial No. **231 of Schedule-I** of IGST Notification 01/2017-IGST(Rate) on the goods should not be denied and the same should not be taxed and re-assessed at correct rate of IGST @18% under Sr. No. **453** of Schedule III of IGST Notification No. 01/2017;
- iii. the differential duty worked out to **Rs. 9,718/- (Rupees Nine Thousand Seven Hundred Eighteen Only)** in respect of Bills of Entry as detailed in above table, should not be recovered under Section 28(4) of the Customs Act, 1962 read with Section 5 of the Integrated Goods and Service Tax Act, 2017 along with applicable interest thereon as per Section 28AA of the Customs Act, 1962 read with Section 50 of the Central Goods and Service Tax Act, 2017 as applicable;

- iv. penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.

14. The importer is further required to produce at the time of show cause, all the evidences upon which they intend to rely in support of their defense. They are further called upon to inform in writing to the Assistant Commissioner of Customs, Custom House, Mundra as to whether they desire to be heard in person before the case is adjudicated. If no cause is shown within 30 days from the date of receipt of this notice or if they fail to appear for personal hearing when the case is posted for hearing the case will be decided ex-parte on the basis of evidences available on record.

15. This Show Cause Notice is being issued as per the scrutiny of records conducted so far. Hence, the department reserves its rights under the provisions of Customs Act, 1962 to conduct further Audit / Scrutiny of the records and issue subsequent or separate show cause notice(s), if any.

16. The present Show Cause Notice is issued without prejudice to any other action that may be taken under any other provision of the Customs Act, 1962 and/or rules made there under and/or under the provisions of any other law for the time being in force in India. The department is also free to issue addendum to this Show Cause Notice, if any, further fact/ documents come to notice.

17. The importer/noticee is further informed that they have the right to opt for closure of these proceedings under Section 28(6) of Customs Act, 1962. If they so decide, then in terms of Section 28(5) of the Customs Act, 1962, they may pay the duty demanded in this Show Cause Notice in full or in part, as may be accepted by them, and the interest payable thereon under Section 28AA and penalty equal to fifteen percent of the duty specified in this notice or the duty so accepted by them, within 30 days of the receipt of the notice and inform the concerned Adjudicating and/or of such payment in writing.

Asst. Commissioner of Customs
Assessment Group-5, Custom
House, Mundra.

**To,
M/s. Vinayak Enterprise (IEC: BCNPS6855D),
5/6 Lati Plot, Morbi, Gujarat-363641**

Copy to:

1. Office copy.

