

	<b>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा</b> <b>OFFICE OF THE PRINCIPAL COMMISSIONER,</b> <b>CUSTOM HOUSE, MUNDRA</b> Port User Building (PUB), Mundra (Gujarat – 370421) ई-मेल/ E-Mail: group5-mundra@gov.in	
	<b>A</b>	<b>फा .सं/. FILE NO.</b>
<b>B</b>	<b>मूल आदेश सं. ORDER-IN-ORIGINAL NO.</b>	MCH/ADC/ZDC/109/2025-26
<b>C</b>	<b>द्वारा पारित किया गया PASSED BY</b>	Dipak Zala ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
<b>D</b>	<b>आदेश की तिथि DATE OF ORDER</b>	07-07-2025
<b>E</b>	<b>जारी करने की तिथि DATE OF ISSUE</b>	07-07-2025
<b>F</b>	<b>कारण बताओ नोटिस सं. एवं तिथि SCN NUMBER &amp; DATE</b>	SCN No. CUS/APR/MISC/8306/2023-Gr 5-6-O/o Pr Commr- Dated 08.07.2024 and 04 PH Letters dated 25.02.2025, 12.03.2025, 24.04.2025 and 30.05.2025 issued to the importer
<b>G</b>	<b>नोटिसीपार्टी / आयातक/ NOTICEE/ PARTY/ IMPORTER</b>	M/s Nimit Enterprises, 118, Jintan Udhyognagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773
<b>H</b>	<b>डिन सं . DIN NUMBER</b>	20250771MO00006606CA

यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

1.

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 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C.

A. -1 to:

“सीमा शुल्क आयुक्त) अपील(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009”

**“The Commissioner of Customs (Appeals), Mundra, 4<sup>TH</sup> Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”**

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 पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए -  
Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –
  5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये 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 ड्यूटी/ 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 सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।  
While submitting the appeal, the Customs (Appeals) Rules, 1982 and the Customs Act, 1962 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, Commissioner (Appeals) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।  
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
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**Brief Facts of the Case:**

M/s Nimit Enterprises, 118, Jintan Udhyognagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773 (hereinafter referred as the noticee) has filed Bills of Entry for importation of "Trigger sprayer" under CTH 8424 49 00 (Details as per TABLE-A) through Customs Broker M/s. OK Cargo.

2. During the analysis of the data, it was observed that the importer had imported "Trigger Sprayer" under Customs Tariff Heading No. 8424 49 00 and paid BCD @ 7.5%. (Details as per TABLE-A).

3. The item covered under CTH 84244900 is "Agricultural or horticultural sprayers-- Others" and attracts BCD @7.5%, however, the imported item is "Trigger Sprayer" which merits classification under Heading 9616 and BCD @20% is leviable. This results in short levy of duty of Rs. 9,99,115/- (Details as per TABLE-A).

**Table-A**

BE No.	BE Dt.	In v. No.	Item No.	Item Desc.	CTH	Item Ass. Value	Duty paid	Total Duty to be paid @ 43.96 [BCD 20% SWS 10% IGST 18%	Duty difference
411 491 4	18.07. 2019	1	1	TRIGGER SPRAYER (134 560 PCS) (OTHER DETAILS AS P)	8424 4900	281566.8	78092 .6	123776.77	45684.17
521 390 5	09-10 -2019	1	1	TRIGGER SPRAYER (134 560 PCS) (OTHER DETAILS AS P)	8424 4900	291255.1	80779 .6	128035.75	47256.15
632 753 4	02-01 -2020	1	1	TRIGGER SPRAYER (128 760 PCS) ( OTHER DETAILS AS P	8424 4900	277735.3	58990 .9	122092.45	63101.55
739 640 7	04-04 -2020	1	1	TRIGGER SPRAYER (129 920 PCS) (OTHER DETAILS AS P)	8424 4900	297581.7	63206 .4	130816.94	67610.54
891 408 9	23-09 -2020	1	1	TRIGGER SPRAYER (128 760 PCS) (OTHER DETAILS AS P)	8424 4900	336192.3	71407 .2	147790.16	76382.96
202 801 1	19-12 -2020	1	1	TRIGGER SPRAYER (128 760 PCS) (OTHER DETAILS AS P)	8424 4900	287585.4	61083 .2	126422.57	65339.37
335 312 3	30-03 -2021	1	1	TRIGGER SPRAYER (185 000 PCS) (OTHER DETAILS AS P)	8424 4900	407092.5	86466 .4	178957.86	92491.46
466 950 3	13-07 -2021	1	1	TRIGGER SPRAYER ( 4962.80 KGS)(OTHER DETAILS )	8424 4900	348473.3	74015 .8	153188.88	79173.08
687 431	29-12 -2021	1	1	TRIGGER SPRAYER A TRANSPARENT PINK(23500 PCS)(OTHER)	8424 4900	54390.75	11552 .6	23910.17	12357.57

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6874310	29-12-2021	1	2	TRIGGER SPRAYER A TRANSPARENT BLUE(23500 PCS)(OTHER)	84244900	54390.75	11552.6	23910.17	12357.57
6874310	29-12-2021	1	3	TRIGGER SPRAYER A TRANSPARENT YELLOW(23500 PCS)	84244900	54390.75	11552.6	23910.17	12357.57
6874310	29-12-2021	1	4	TRIGGER SPRAYER TS-923(74880 PCS)(OTHER DETAILS AS)	84244900	231079.68	49081.4	101582.63	52501.23
8890644	30-05-2022	1	1	TRIGGER SPRAYER A (TRANSPARENT PINK)(OTHER DETAILS)	84244900	38907	8263.8	17103.52	8839.72
8890644	30-05-2022	1	2	TRIGGER SPRAYER A (TRANSPARENT BLUE)(OTHER DETAILS)	84244900	38907	8263.8	17103.52	8839.72
8890644	30-05-2022	1	3	TRIGGER SPRAYER A (TRANSPARENT YELLOW)(OTHER details)	84244900	40086	8514.3	17621.81	9107.51
8890644	30-05-2022	1	4	TRIGGER SPRAYER TS-923 (COLOR: COMPLETE BLACK)(OTHER)	84244900	272848.9	57953.2	119944.38	61991.18
2819614	11-10-2022	1	1	TRIGGER SPRAYER A (TRANSPARENT PINK)(OTHER DETAILS)	84244900	96466.5	26755	42406.67	15651.67
2819614	11-10-2022	1	2	TRIGGER SPRAYER A (TRANSPARENT BLUE)(OTHER DETAILS)	84244900	96466.5	26755	42406.67	15651.67
2819614	11-10-2022	1	3	TRIGGER SPRAYER A (TRANSPARENT YELLOW)(OTHER DETAILS)	84244900	97703.25	27098	42950.35	15852.35
2819614	11-10-2022	1	4	TRIGGER SPRAYER A (COMPLETE BLACK)(OTHER DETAILS AS)	84244900	24735	6860.2	10873.51	4013.31
2819614	11-10-2022	1	5	TRIGGER SPRAYER TS-923 (COLOR: COMPLETE BLACK)(OTHER)	84244900	126643.2	35124.4	55672.35	20547.95
3955926	29-12-2022	1	1	TRIGGER SPRAYER A (TRANSPARENT PINK)(OTHER DETAILS)	84244900	66422.25	18422.3	29199.22	10776.92
3955926	29-12-2022	1	2	TRIGGER SPRAYER A (TRANSPARENT BLUE)(OTHER DETAILS)	84244900	66422.25	18422.3	29199.22	10776.92

3955926	29-12-2022	1	3	TRIGGER SPRAYER A (TRANSPARENT YELLOW)(OTHER DETAI	84244900	67675.5	18769.9	29750.15	10980.25
3955926	29-12-2022	1	4	TRIGGER SPRAYER TS-923 (COLOR COMPLETE BLACK)(OTHE	84244900	230999.04	64067.6	101547.18	37479.58
6044940	20-05-2023	1	1	TRIGGER SPRAYER A [ TRANSPARENT PINK] [ OTHER DETAIL]	84244900	83716.5	23218.8	36801.77	13582.97
6044940	20-05-2023	1	2	TRIGGER SPRAYER A [ TRANSPARENT BLUE] [ OTHER DETAIL]	84244900	83716.5	23218.8	36801.77	13582.97
6044940	20-05-2023	1	3	TRIGGER SPRAYER A [ TRANSPARENT YELLOW]	84244900	82467	22872.2	36252.49	13380.29
6044940	20-05-2023	1	4	TRIGGER SPRAYER TS-923[ COLOR: COMPLETE BLACK]	84244900	191923.2	53229.8	84369.44	31139.64
7622831	01/09/2023	1	1	TRIGGER SPRAYER A [ TRANSPARENT PINK ]	84244900	59149.5	16405.1	26002.12	9597.02
7622831	01-09-2023	1	2	TRIGGER SPRAYER A [ TRANSPARENT YELLOW ]	84244900	59149.5	16405.1	26002.12	9597.02
7622831	01-09-2023	1	3	TRIGGER SPRAYER A [ TRANSPARENT BLUE ] [ OTHER DETAIL	84244900	57891	16056.1	25448.88	9392.78
7622831	01-09-2023	1	4	TRIGGER SPRAYER A [ FULL BLACK] [ OTHER DETAIL	84244900	25170	6981	11064.73	4083.73
7622831	01-09-2023	1	5	TRIGGER SPRAYER TS-923[ COLOR COMPLETE BLACK ]	84244900	231966.72	64336	101972.57	37636.57
<b>Total</b>							12,25,774	22,24,888.97	9,99,114.97

4. The relevant CTH 8424 under which the importer has declared the goods is reproduced below:

<b>8424</b>	<b>MECHANICAL APPLIANCES (WHETHER OR NOT HAND-OPERATED) FOR PROJECTING, DISPERSING OR SPRAYING LIQUIDS OR POWDERS; FIRE EXTINGUISHERS, WHETHER OR NOT CHARGED; SPRAY GUNS AND SIMILAR APPLIANCES; STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES</b>		
8424 10 00	- Fire extinguishers, whether or not charged	u	7.5%
8424 20 00	- Spray guns and similar appliances	u	7.5%
8424 30 00	- Steam or sand blasting machines and similar jet projecting machines	u	7.5%
	- <i>Agricultural or horticultural sprayers:</i>		
8424 41 00	-- Portable sprayers	u	7.5%
8424 49 00	-- Other	u	7.5%

5. As per the description of the item i.e, "Trigger Sprayer", it appears that the imported goods merit classification under 9616 and are leviable to BCD @ 20 per cent. Ongoing through the invoices submitted with the Bills of entry, it is seen that the items are described as Trigger Sprayers, and they do not appear as Agricultural or horticultural sprayers.

6. The relevant CTH 9616 under which the importer has to be declared the goods is reproduced below:

<b>9616</b>	<b>SCENT SPRAYS AND SIMILAR TOILET SPRAYS, AND MOUNTS AND HEADS THEREFOR; POWDER-PUFFS AND PADS FOR THE APPLICATION OF COSMETICS OR TOILET PREPARATIONS</b>			<b>7.</b>
9616 10	- Scent sprays and similar toilet sprays, and mounts and heads therefor :			
9616 10 10	--- Scent sprays and similar toilet sprays	kg.	20%	
9616 10 20	--- Mounts and heads	kg.	20%	
9616 20 00	- Powder-puffs and pads for the application of cosmetics or toilet preparations	kg.	20%	

### Relevant Legal Provisions

#### **Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -**

(4) 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 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 <sup>11</sup>[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.

#### **Section 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.*

**Section 114A. Penalty for short-levy or non-levy of duty in certain cases.**

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*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

**Provided** *that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

**Provided** *further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:*

**Provided** *also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

**Provided** *also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five*

*percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :*

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

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

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

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

Therefore, it appears that the duty short paid is required to be recovered under Section 28(4) of the Customs Act, 1962 along with interest at applicable rate under Section 28AA of the Customs Act, 1962. Further, it appears that by said act of misdeclaration, the importer has made themselves liable for penalty under Section 114A of the Customs Act, 1962.

9. Now therefore M/s Nimit Enterprises, 118, Jintan Udhyog nagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773, is hereby called upon to show cause in writing to the Additional Commissioner of Customs, having office at Office of the Commissioner, Custom House, 5 B, Port User Building, Mundra Port, Mundra- Kutch within 30 days from the date of receipt of this notice, as to why:

- i. the declared CTH ie. 84244900 of imported goods i.e. "Trigger Sprayer" under Bills of Entry in Table A should not be rejected and re-assessed by re-classifying them under appropriate CTH 96161020 of the Custom Tariff Act, 1975.
- ii. Differential duty amounting to Rs. 9,99,115/- short paid by them on the aforesaid imported goods not be demanded under Section 28(4) of the Customs Act, 1962.
- iii. The applicable interest on the amount as at Sr. No. (ii) above should not be demanded and recovered under Section 28AA of the Customs Act, 1962.
- iv. Penalty should not be imposed under Section 114A of the Customs Act, 1962

### **SCN AND RECORD OF PERSONAL HEARING**

10. SCN No. CUS/APR/MISC/8306/2023-Gr 5-6-O/o Pr Commr- Dated 08.07.2024 issued to the importer. Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order, Therefore, the importer was given 03 personal hearing dated 25.02.2025 at 04:30 PM, 12.03.2025 at 12:30 PM and 24.04.2025 at 03:30 PM through in person or virtual mode. The importer has not attended any of the Personal Hearing. Further, as per transfer of Adjudicating Authority one more PH dated 30.05.2025 at 11:00 AM was given to the importer. The PH was attended by Advocate Shri Anil Pundir on behalf of the importer. The advocate submitted reply on behalf of the importer. In his reply letter dated 30.05.2025 para 2, the importer submitted that "A trigger sprayer is a manually operated device made of plastic and it is attached to a bottle. Its function is to dispense liquids such as water, disinfectants, or cleaning agents in a spray or mist from when the trigger is pressed. It is commonly used as household cleaner or as a sprayer for agriculture and horticulture use." The importer also mentioned that Trigger Sprayers are not complete machines but are parts/accessories of machines that dispense liquids. Further, the importer submitted that the declared CTH of the goods is correct and prayed to drop the demand of the SCN.

### **DISCUSSION & FINDING**

11. I have carefully gone through the case records and applicable provisions of Law. I find that the Importer was given 04 Personal Hearing as mentioned in para 10, thus, the condition of Principles of Natural Justice *under Section 122A of the Customs Act, 1962* has been complied with. Hence, I proceed to decide the case on the basis of facts, Importer's reply submitted by his advocate and documentary evidences available on records.

12. The main issues before me are to decide whether-

i. the declared CTH ie. 84244900 of imported goods i.e. "Trigger Sprayer" under Bills of Entry in Table A should not be rejected and re-assessed by re-classifying them under appropriate CTH 96161020 of the Custom Tariff Act, 1975.

ii. Differential duty amounting to Rs. 9,99,115/- short paid by them on the aforesaid imported goods not be demanded under Section 28(4) of the Customs Act, 1962.

iii. The applicable interest on the amount as at Sr. No. (ii) above should not be demanded and recovered under Section 28AA of the Customs Act, 1962.

iv. Penalty should not be imposed under Section 114A of the Customs Act, 1962.

**12.1.** I find that M/s Nimit Enterprises, 118, Jintan Udhyog nagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773 has filed Bills of Entry for importation of the goods "Trigger sprayer" under CTH 8424 49 00 (Details as per TABLE-A above) through Customs Broker M/s. OK Cargo.

**12.2.** I find that During the analysis of the data, it was observed that the importer had imported "Trigger Sprayer" under Customs Tariff Heading No. 8424 49 00 and paid BCD @ 7.5%. (Details as per TABLE-A). The item covered under CTH 84244900 is "Agricultural or horticultural sprayers-- Others" and attracts BCD @7.5%. However, the imported item is "Trigger Sprayer" which merits classification under Heading 9616 and BCD @20% is leviable. This results in short levy of duty of Rs. 9,99,115/- (Details as per TABLE-A above).

**12.3.** I find that The relevant CTH 8424 under which the importer has declared the goods is reproduced below:

<b>8424</b>	<b>MECHANICAL APPLIANCES (WHETHER OR NOT HAND-OPERATED) FOR PROJECTING, DISPERSING OR SPRAYING LIQUIDS OR POWDERS; FIRE EXTINGUISHERS, WHETHER OR NOT CHARGED; SPRAY GUNS AND SIMILAR APPLIANCES; STEAM OR SAND BLASTING MACHINES AND SIMILAR JET PROJECTING MACHINES</b>		
8424 10 00	- Fire extinguishers, whether or not charged	u	7.5%
8424 20 00	- Spray guns and similar appliances	u	7.5%
8424 30 00	- Steam or sand blasting machines and similar jet projecting machines	u	7.5%
	- <i>Agricultural or horticultural sprayers:</i>		
8424 41 00	-- Portable sprayers	u	7.5%
8424 49 00	-- Other	u	7.5%

As per the description of the item i.e "Trigger Sprayer", it appears that the imported goods merits classification under 9616 and leviable to BCD @ 20 per cent. Ongoing through the invoices submitted with the Bills of entry, it is seen that the items are described as Trigger Sprayers and they not appear as Agricultural or horticultural sprayers.

The relevant CTH 9616 under which the importer has to be declared the goods is reproduced below:

<b>9616</b>	<b>SCENT SPRAYS AND SIMILAR TOILET SPRAYS, AND MOUNTS AND HEADS THEREFOR; POWDER-PUFFS AND PADS FOR THE APPLICATION OF COSMETICS OR TOILET PREPARATIONS</b>		
9616 10	- <i>Scent sprays and similar toilet sprays, and mounts and heads therefor :</i>		
9616 10 10	--- Scent sprays and similar toilet sprays	kg.	20%
9616 10 20	--- Mounts and heads	kg.	20%
9616 20 00	- Powder-puffs and pads for the application of cosmetics or toilet preparations	kg.	20%

12.4. I find that the importer has submitted the explanation regarding classification of the goods. In his reply letter dated 30.05.2025 para 2, the importer submitted that "A trigger sprayer is a manually operated device made of plastic and it is attached to a bottle. Its function is to dispense liquids such as water, disinfectants, or cleaning agents in a spray or mist from when the trigger is pressed. It is commonly used as household cleaner or as a sprayer for agriculture and horticulture use." The importer also mentioned that Trigger Sprayers are not complete machines but are parts/accessories of machines that dispense liquids.

From the above it clearly appears that the goods imported by the importer may also be used as household cleaner or sprayer for agriculture and horticulture use. I also find that the importer has not declared anywhere in the Bill of Entry, Invoice and Packing list that the goods are parts/use of sprayer for agriculture and horticulture.

12.5. I find that as per Rule 1 of General Rules for the Interpretation (GRI) classification is determined according to the terms of the headings and any relevant section or Chapter Notes.

In view of the above I find that CTH 8424 covers Mechanical appliances for projecting, dispersing or spraying liquids or powders; Fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines. I also find that the declared CTH 84244900 by the importer is for "Agricultural or Horticultural sprayers other than Portable Sprayer" and not for the Trigger Sprayers which are the parts of machines that dispense liquids. So it is clearly evident that the declared CTH of the goods by the importer is wrong.

12.6. Further, I find that CTH 9616.10 covers Scent sprays and similar toilet sprays and mount and heads thereof. As per use of Trigger sprayer it clearly evident that the goods also used for cleaning/Hair care purpose as in mount and heads thereof with bottle and same was submitted by the importer in his reply letter. I also find that the importer has not declared anywhere in the Bill of Entry, Invoice and Packing list that the goods are parts/use of sprayer for agriculture and horticulture. So, I find that the goods are correctly classifiable under CTH 96161020 as per description and use.

12.7. From the above discussion I find that the importer has imported goods in violation of Section 46 of the Customs Act, 1962 and filed the Bill of Entry with incorrect CTH. from the advent of self-assessment in 2011, it is the responsibility of the importer while presenting the bill of entry under Section 46 of the Custom Act, 1962, shall make and subscribe to a declaration as to the truth and correctness of the contents of the bill of entry and to classify the goods under appropriate tariff item. In the instant case, it appears that importer has willfully suppressed the facts and deliberately misclassified the imported goods with a mala fide intention to evade the duty.

Therefore, it appears that the duty short paid is required to be recovered under Section 28(4) of the Customs Act, 1962 along with interest at applicable rate under Section 28AA of the Customs Act. 1962. Further, it appears that by said act of misdeclaration, the importer has made themselves liable for penalty under Section 114A of the Customs Act, 1962.

## **12.8. I find that Relevant Legal Provisions**

### ***Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. -***

*(4) 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 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 <sup>11</sup>[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.*

**Section 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.*

**Section 114A. Penalty for short-levy or non-levy of duty in certain cases.**

-

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

**Provided** *that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

**Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

**Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

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

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

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

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

**13. In view of the forgoing discussions and finding, I pass the following ORDER:**

#### **ORDER**

- i. I reject the declared CTH i.e. 84244900 of the imported goods "Trigger Sprayer" under Bills of Entry as mentioned in Table-A above and order to re-assess by re-classifying the said goods under appropriate CTH 96161020 of the Custom Tariff Act, 1975.
- ii. I demand and order to recover an amount of Differential duty of Rs. 9,99,115/- (Rupees Nine Lakh Ninety-Nine Thousand One Hundred Fifteen Only) from M/s Nimit Enterprises, 118, Jintan Udhyog nagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773, as leviable on the impugned goods and short paid by the noticee in terms of Section 28(4) of the Customs Act, 1962.
- iii. I order to charge and recover interest from M/s Nimit Enterprises, 118, Jintan Udhyog nagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773 on the confirmed duty amount at Sl. No. (ii) above, under Section 28AA of the Customs Act, 1962.
- iv. I impose a penalty of Rs. 9,99,115/- (Rupees Nine Lakh Ninety-Nine Thousand One Hundred Fifteen Only) upon M/s Nimit Enterprises, 118, Jintan Udhyog nagar, Opp. Vora Industries, Surendranagar-363001 holding IEC No. 2407000773 under Section 114A of the Customs Act, 1962; However, as per first proviso to Section 114A of the Customs Act, 1962, if they pay the amount

of duty determined under at (ii) above along with interest payable thereon as ordered under at Si. No. (iii) above within thirty days from the date of communication of this order, the amount of penalty shall be twenty-five percent of the duty confirmed above. The benefit of reduced penalty shall be available if the amount of reduced penalty is also paid within the aforesaid period of thirty days.

14. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

15. The Show Cause Notice bearing No. CUS/APR/MISC/8306/2023-Gr 5-6-O/o Pr Commr- Dated 08.07.20244 stands disposed in above terms

**(Dipak Zala)**

**Additional Commissioner of Customs**

**Assessment Group-V, Mundra Customs**

To,  
M/s Nimit Enterprises,  
118, Jintan Udhyog nagar,  
Opp. Vora Industries,  
Surendranagar-363001

Copy to:

1. The Dy. Commissioner of Customs, Review Section, CH, Mundra
2. The Dy. Commissioner of Customs, TRC Section, CH, Mundra
3. The Dy. Commissioner of Customs, EDI Section, CH, Mundra
4. Guard file

