



## भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड भारतीय सीमाशुल्क, I-मुंबई अंचल -

### आयुक्त सीमाशुल्क (आयात-II) का कार्यालय

द्वितीय मंजिल, नवीन सीमा शुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,  
मुंबई-400001.

दूरध्वनि-022-22757457

ई-मेल: adjncell-imp2nch@gov.in

फा. सं. : F. No. S/10-135/2023-24/Commr/CAC/ NS-V/JNCH

CUS/APR/MISC/7236/2024-Adjudication Section -O/o Commissioner-Customs-

Nhava Sheva-V

के द्वारा जारी किया गया : श्री कुमार अमरेन्द्र नारायण  
आयुक्त सीमाशुल्क (आयात-II) ॥

आदेश दिनांक: 18.09.2025  
जारी दिनांक: 18.09.2025

सी.ए.ओ. क्रमांक : 98/2025-26/CAC/CC/IMPORT-II/KAN/Adjn(IMP-II)

DIN- 202509770000003353B3

### मूल आदेश

- 1- प्रति उस व्यक्ति के प्रयोग के लिए निः शुल्क है, जिसके लिए यह पारित किया है।
- 2- इस आदेश के विरुद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी. मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
- 3- सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई हो )इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।
- 4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
- 5- जो व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की साढ़े सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।



**GOVERNMENT OF INDIA**  
**MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE**  
**CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE - I**  
**OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-II)**  
2<sup>nd</sup> FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,  
MUMBAI - 400001.

Tel. No. 022-22757457

e-mail: [adjncell-imp2nch@gov.in](mailto:adjncell-imp2nch@gov.in)

F. No.: S/10-135/2023-24/Commr/CAC/ NS-V/JNCH

CUS/APR/MISC/7236/2024-Adjudication Section -O/o Commissioner-Customs-  
Nhava Sheva-V

Passed by: Shri Kumar Amrendra Narayan  
COMMISSIONER OF CUSTOMS (IMPORT-II)

Date of Order: 18.09.2025  
Date of Issue: 18.09.2025

C.A.O. No.: 98/2025-26/CAC/CC/IMPORT-II/KAN/Adjn(IMP-II)  
DIN- 202509770000003353B3

**ORDER-IN-ORIGINAL**

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.
3. The appeal is required to be filed as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A.3 appended to said rules. The appeal should be in quadruplicate and needs to be filed within 90 days and shall be accompanied by four copies of the order appealed against (at least one of which should be certified copy). A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 1,000/-, Rs. 5,000/- or Rs. 10,000/- as applicable under Sub Section (6) of the Section 129A of the Customs Act, 1962.
4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer.
5. Any person desirous of appealing against this decision or order shall pending the appeal deposit seven and a half per cent of the duty demanded or the penalty levied therein and produce proof of such payment along with the appeal failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act, 1962.



**F. No. S/10-135/2023-24/Commr/CAC/ NS-V/JNCH**  
**SCN No. 1361/2023-24/Commr/Gr. VA/CAC/JNCH dated 22.09.02023**

**Adjudication of Show Cause Notice No. 1361/2023-24/Commr/Gr. VA/CAC/JNCH dated 22.09.02023 issued vide F. No. S/26-Misc-632/2023-24/gr. VA JNCH under Section 28(4) of the Customs Act, 1962**

On the basis of the Alert Circular No. 01/2018 issued by the Audit Commissioner of Delhi, on the issue of "Short Levy of Customs Duty" by way of claiming ineligible benefits of Sl. No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Ntfn. 69-2018-Cus. dated 26-09-2018), data pertaining to imports under CTH 8518 made by various importers through JNCH (INNSA1) was analysed in detail.

It is observed that M/s. KUNHAR PERIPHERALS PRIVATE LIMITED (IEC - 03194010450) having address as 407, NUCLEAS MALL, 4TH FLOOR,,1, CHURCH ROAD, PUNE, MAHARASHTRA-411001 have imported goods having description as "Speaker" under the aforesaid CTH as detailed in Table-A Below ( which is also annexed as Annexure-A to the SCN). The importer has paid BCD @10%. The imported goods attract BCD @ 15%. The said exemption is not available for speakers.

**TABLE-A**

BE Number	BE Date	IEC NAME	Item Description	Total Assessable Value - Assessed	Short Levy Of Duty
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKERS(MODEL ARTIS BT20)(COLOR BLACK)(WPC	906981.25	58924
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER 1091T	308.27	24
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER 533	590.83	38
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER A590	812.39	53
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER K2201	590.83	38
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER TG137	590.83	38
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER TG153	516.99	34
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER TG155	590.83	38
8205027	26-09-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL NO. BT14)(COLOR BLACK)(BRAND ARTIS)(WPC E	564981.66	36667
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB (MODEL BT90)(BRAN	3191147.11	207105
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT222)(BRAN	301892.78	19593
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT405)(BRAN	291186.12	18899
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT54)(BRAN	2115004.66	137264
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT603)(BRAN	572192.13	37135
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT702)(BRAN	533556	34628
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT99)(BRAN	3268066.05	147197
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT99)(BRAN	331731.02	21529
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL K1202)	877.6	57
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL K1209)	877.6	57
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL K2201)	877.6	57
9022702	27-11-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL SH02)	877.6	57
9214501	11-12-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER (MODEL BT50)(BRAND ARTIS)(WPC ETA CE	298054.49	19344
9214501	11-12-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL NO BT11)(BRAND ARTIS)(WPC ETA	388483.23	25213
9214501	11-12-2018	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL NO BT30)(BRAND ARTIS)(WPC ETA	254360.58	16508
9585840	10-01-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.0 USB MULTIMEDIA SPEAKER (W/O USB/FM/SD)(MODEL ARTIS MINI)(COLOR	412270.09	26756
9585840	10-01-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.0 USB MULTIMEDIA SPEAKER (W/O USB/FM/SD)(MODEL ARTIS MINI)(COLOR	961963.55	62431
9585840	10-01-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.0 USB MULTIMEDIA SPEAKER(W/O USB/FM/SD)(MODEL ARTIS S9)	838719.36	54433
9585840	10-01-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER W/WIRED MIC/USB/BT/TF/AUX(MODEL BT	1837406.32	119248
9692119	18-01-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT99)(BRAN	7852750.86	509644
9900516	07-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT700)(BRAND ARTIS)(WPC ETA CE	1165061.96	75613

BE Number	BE Date	IEC NAME	Item Description	Total Assessable Value - Assessed	Short Levy Of Duty
9960516	07-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT800)(WPC ETA CERT NOSR-ETA/	924991.22	60032
9960516	07-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT900)(WPC ETA CERT NOSR-ETA/	1028106.9	66724
9960516	07-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL LG-1228N)(NCV)	5083.17	330
9960516	07-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL LG-1506M)(NCV)	7116.43	462
9960516	07-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL LG-203)(NCV)	2323.73	151
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	BT MULTIMEDIA SPEAKER(NCV)	1805.77	117
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL NO. BT81)(BRAND ARTIS)(WPCETA	753094.74	48876
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT05)(COLOR BLACK)(BRAND ARTIS)(WPCETA CE	236972.72	15380
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT05)(COLOR BLUE)(BRAND ARTIS)(WPCETA CE	236972.72	15380
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT06)(COLOR SILVER NON SHINY)(BRANDARTIS	476889.2	30950
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT07)(COLOR BLACK)(BRAND ARTIS)(WPCETA C	591095.86	38401
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT22)(BRAND ARTIS)(WPC ETA CERT NOSR-ETA	427698.96	27758
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT34)(BRAND ARTIS)(WPC ETA CERT NOSR-ETA	693167.29	44987
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT45)(BRAND ARTIS)(WPC ETA CERT NOSR-ETA	443330.33	28772
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL BT72)(BRAND ARTIS)(WPC ETA CERT NOSR-ETA	471943.68	30629
2207530	26-02-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(MODEL NO.BT14)(COLOR BLACK)(BRAND ARTIS)(WPC E	365026.3	23690
2318103	07-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL BT54)(BRAND ARTIS)(WP	2540568.09	164883
2318103	07-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL BT99)(BRAND ARTIS)(WP	6198355.46	402273
2505820	20-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MODEL BT99)(BRAN	6112775.3	396687
2505820	20-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER WITH BT/AUX-IN/USB(MODEL BT54)(BRAND ARTIS)(WP	7505285.75	162593
2549165	23-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT908)(BRAND ARTIS)(WPC ETA CE	1194721.8	77537
2549165	23-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT912)(BRAND ARTIS)(WPC ETA CE	1477496.19	95890
2549165	23-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT915)(BRAND ARTIS)(WPC ETA CE	994658.92	64553
2549165	23-03-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL NO.BT33)(BRAND ARTIS)(WPCETA	699866.62	45421
2668373	01-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.1 MULTIMEDIA SPEAKER SYSTEM (WITH USB/SD/FM/BT/REMOTE)(MODEL NO	979523.31	63571
2668373	01-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.1 MULTIMEDIA SPEAKER SYSTEM(WITH USB/SD/FM/BT/REMOTE)(MODEL NO	656095.8	42581
2668373	01-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	5.1 MULTIMEDIA SPEAKER SYSTEM(WITH USB/SD/FM/BT/REMOTE)(MODEL NO	895645.4	58127
2668373	01-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER SYSTEM H330(INCV)(WITH USB/SD/FM/BT/REMOTE)	1492.74	97
2668373	01-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER SYSTEM R231(INCV)( WITH USB/SD/FM/BT/REMOTE)	1208.41	78
2788406	10-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/BT/MIC)(MODEL BT912)(BR	1386979.63	90015



**F. No. S/10-135/2023-24/Commr/CAC/ NS-V/JNCH**  
**SCN No. 1361/2023-24/Commr/Gr. VA/CAC/JNCH dated 22.09.2023**

BE Number	BE Date	REC NAME	Item Description	Total Assessable Value - Assessed	Short Levy Or Duty
2788406	10-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/BT/MIC)(MODEL BT115)(H)	115464.65	7384
2788406	10-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/BT/MIC)(MODEL NO BT331)	484243.43	30005
2875776	17-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/BT/MIC)(MODEL BT108)(H)	823072.73	51417
2875776	17-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/BT/MIC)(MODEL BT015)(H)	584338.84	35328
2875776	17-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/BT/MIC)(MODEL BT918)(H)	631729.02	40999
2920886	20-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(INCV)	1403.84	21
2920886	20-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.1 MULTIMEDIA SPEAKER SYSTEM (WITH USB/SD/H/W/BT/REMOTE)(MODEL NO	913679.96	64490
2920886	20-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	5.1 MULTIMEDIA SPEAKER SYSTEM(WITH USB/SD/FM/BT/REMOTE)(MODEL NO	666835.66	43278
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/SD/FM/BT/REMOTE)(MODEL NO	910306.54	59079
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER (MODEL BT503)(BRAND ARTIS)(WPC ETA CE	294070.67	19085
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT13)(BRAND ARTIS)(WPC ETA CE	95738.08	6080
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT908)(BRAND ARTIS)(WPC ETA CE	374634.55	17759
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL NO BT11)(BRAND ARTIS)(WPC ETA	824644.7	52519
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL NO BT13)(BRAND ARTIS)(WPC ETA	243820.33	15824
3041603	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA SPEAKER(INCV)	822.18	53
3054938	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER W/BT/USB/SD/FM/AUX/LMIC/REMOTE(MODEL	1877083.17	121553
3054938	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER W/BT/USB/SD/FM/AUX/LMIC/REMOTE(MODEL	3485980.34	250493
3054938	30-04-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER W/BT/USB/SD/FM/AUX/LMIC/REMOTE(MODEL	987624.09	64097
3177074	10-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER W/WIRED MIC/USB/BT/TF/AUX(MODEL BT	306688.10	198639
3251813	16-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/MIC/REMOTE)(MODEL BT91	135702.1	21782
3251813	16-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/MIC/REMOTE)(MODEL BT91	594408.72	38577
3251813	16-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/MIC/REMOTE)(MODEL BT91	235706.43	13297
3251813	16-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/MIC/REMOTE)(MODEL BT91	557134.3	36157
3251813	16-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/MIC/REMOTE)(MODEL BT91	353559.45	21946
3376658	24-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/FM/MIC/REMOTE)(MODEL BT91	627131.25	40701
3376658	24-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT22)(BRAND ARTIS)(WPC ETA CE	866140.31	58214
3376658	24-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT45)(BRAND ARTIS)(WPC ETA CE	829433.16	53842
3376658	24-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(INCV)	9382	609
3376658	24-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA USB SPEAKER(INCV)	4919.42	32
3416052	28-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.1 MULTIMEDIA SPEAKER SYSTEM(WITH USB/SD/FM/BT/AUX)(MODEL NO.MS	8172678.46	76107

BE Number	BE Date	REC NAME	Item Description	Total Assessable Value - Assessed	Short Levy Or Duty
3416052	28-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.1 MULTIMEDIA SPEAKER SYSTEM(WITH USB/SD/FM/BT/AUX)(MODEL NO.MS	66868.54	4340
3416052	28-05-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	5.1 MULTIMEDIA SPEAKER SYSTEM(WITH USB/SD/FM/BT/AUX)(MODEL NO.MS	1702252.01	110476
3484338	01-06-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.0 USB MULTIMEDIA SPEAKER (W/O USB/FM/SD)(MODEL ARTIS MINI)(COLOR	276440.83	17941
3484338	01-06-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	2.0 USB MULTIMEDIA SPEAKER (W/O USB/FM/SD)(MODEL ARTIS MINI)(COLOR	693839.04	45030
3793783	24-06-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(W/O USB/FM/SD)(MODEL ARTIS 39)	1109400.59	72000
3793783	24-06-2019	KUNHAR PERIPHERALS PRIVATE LIMIT	MULTIMEDIA BLUETOOTH SPEAKER(MODEL BT22)(BRAND ARTIS)(WPC ETA CE	858292.06	55703
KUNHAR PERIPHERALS PRIVATE LIMITED Total				1272.59	83
				85199240.59	5529431

2. The Bills of Entry (as per Annexure-A to the SCN) wherein goods have been classified under CTH 8518 attract levy of BCD as per Table-A. However, they have been cleared under lower rate of BCD. As per Notification No. 57/2017-Cus dated 30.06.2017 as amended by Ntnf. 69-2018-Cus. dated 26-09-2018, following changes in effective Basic Customs Duty have been made:-

**TABLE-B**

(Effective BCD Rate on CTH-8518)

S. No.	Ntnf.	Chapter or Heading or Subheading or tariff item	Description of goods	Standard Rate (Ntnf.)	Condition No.
18	Ntnf.57/2017-Cus. dated 30.06.2017 Amended by Ntnf.69/2018-Cus. dated 26.09.18	8518	All goods other than  (i) Speakers, and;  (ii) The following parts of cellular mobile phones namely : -  (1) Microphone (2) Wired Headsets ; and (3) Receiver	10%	-

3. Consequent upon the above notifications, it is amply clear that Sr No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (amended by Ntnf. 69-2018-Cus. dated 26-09-2018) applies to All goods other than the following Parts of cellular Mobile phones

- i. Speakers &
- ii. Wired Headsets
- iii. Receiver

Therefore, the imported goods being Speakers do not qualify for the exemption of BCD under Sr No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (amended by Ntnf. 69-2018-Cus. dated 26-09-2018).

3.1. The total assessable value of the BE items so imported is ₹ 8,51,99,240.59/- and it appears that a short levy of BCD amounting to ₹ 55,29,431/- (as detailed in Annexure-'A' to the SCN) is recoverable from the Importer along with applicable interest and penalty.

4. In view of the above, Consultative letter was issued to the importer to clarify the issue raised by the department and if agreed to the observation/finding of the department, the importer was advised to pay the differential duty alongwith applicable interest and penalty. However, no reply or submission is given by importer in this regard.

5. Relevant legal provisions for recovery of duty that appears to be evaded are reproduced here for the sake of brevity which are applicable in this instant case:

5.1 After the introduction of self-assessment vide Finance Act, 2011, the onus is on the importer to make true and correct declaration in all aspects including classification and calculation of duty, but in the instant case the subject goods have been mis-classified and duty amount has not been paid correctly. **Section 17 (Assessment of duty)**, subsection (1) reads as:

*'An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.'*

5.2 **Section 28 (Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded)** reads as:

*'(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 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.*

*(5) Where any 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 subsection (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent 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. '*

5.3 **Section 46 (Entry of goods on importation)**, subsection (4) reads as:

*'(4) 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.'*

5.4 **Section 111 (Confiscation of improperly imported goods etc.)** reads as:

*'The following goods brought from a place outside India shall be liable to confiscation:*

*(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;'*

5.5 **Section 112 (Penalty for improper importation of goods etc.)** reads as:

*'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, -*

*(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*

*(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher.'*

**5.6 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 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 sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.'*

6. Whereas, consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a bill of entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under self-assessment, it is the Importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendments to Section 17, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods

7. Therefore, in view of the above facts, it appears that the importer has deliberately not paid the duty by wilful mis-statement as it was his duty to declare correct applicable rate of duty in the entry made under Section 46 of the Customs Act, 1962, and thereby has attempted to take undue benefit amounting to ₹ 55,29,431/- (as detailed in Annexure-'A' to the SCN). Therefore, the differential duty, so not paid, is liable for recovery from the Importer under Section 28 (4) of the Customs Act, 1962 by invoking extended period of limitation, along with applicable interest at the applicable rate under section 28AA of the Customs Act, 1962 and for their acts of omission/commission.

8. Section 111(o) of Customs Act, 1962 provides for confiscation of the goods if any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which condition is not observed unless the non-observance of the condition was sanctioned by the proper officer. Section 111(m) of Customs Act, 1962 provides for confiscation of the goods if any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

9. It appears that the Importer has failed to comply with the conditions mentioned above; therefore, it also appears that the imported goods are liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.

10. It further appears that the Importer for the acts of omission and commissions mentioned above has rendered themselves liable for penal action under section 112(a) and 114A of the Customs Act. 1962.

11. In view of the above, the importer, **M/s. KUNHAR PERIPHERALS PRIVATE LIMITED (IEC-03194010450)** having address as 407, NUCLEAS MALL, 4TH FLOOR,,1, CHURCH ROAD,

PUNE, MAHARASHTRA-411001 is hereby called to show cause to the Commissioner of Customs, NS-V, JNCH, Nhava-Sheva, Distt. Raigad, Maharashtra- 400707 within 30 days of the receipt of this notice as to why:

- (i) Differential/short paid Duty amounting to ₹ 55,29,431/- for the subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the SCN should not be demanded under Section 28(4) of the Custom Act, 1962.
- (ii) In addition to the duty short paid, interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act. 1962.
- (iii) The said subject goods imported vide Bills of Entry as detailed in Annexure-'A' to the SCN having assessable value of ₹ 8,51,99,240.59/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iv) Penalty should not be imposed on them under Section 112(a) of the Customs Act. 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

12. Further approval of extension of adjudication, till 21.09.2025 was granted by Chief commissioner of Customs, JNCH vide order dated 22.08.2024.

### **13. SUBMISSION OF THE IMPORTER**

13.1 The Noticee is engaged in the business of trading and manufacturing electronics in the fields of Home Audio, Personal Audio, IT & Power Sector. The Noticee imports various parts and equipment used in manufacturing of electronics as well as finished goods for trading.

13.2 In the ordinary course of business, during the period 26.09.2018 to 24.06.2019, the Noticee imported Multimedia Speakers and classified the same under Heading 8518.

13.3 The Noticee did not avail benefit of any exemption notification and accordingly, made payment of the Basic Customs Duty ("BCD") at the standard tariff rate i.e. @ 10%. and IGST @18% in terms of Sr. No. 380 in Schedule III of the Notification No. 01/2017-Integrated Tax (Rate) dated 28.06.2017.

#### **Issuance of impugned Show Cause Notice No. 1361/2023-24/Commr/Gr. VA/CAC/JNCH dated 22.09.2023**

13.4 Much after the clearance of the goods, the Department was of the opinion that the Noticee has short paid BCD (at the rate of 10% instead of the applicable rate of 15%) by wrongfully availing the benefit of exemption in terms of Notification No. 57/2017-Cus. dated 30.06.2017.

13.5 In light of the aforementioned facts and circumstances, the Impugned SCN dated 22.09.2023 has been issued to the Noticee. The SCN proceeds on the following grounds:

- (a) The Noticee has availed benefit of Sr. No. 18 in Notification No. 57/2017-Cus. dated 30.06.2017 which was amended vide Notification No. 69/2018-Cus. dated 26.09.2018. After the amendment, speakers were excluded from the ambit of exemption benefit under the Notification. Therefore, the speakers imported by the Noticee do not qualify for the BCD exemption.



- (b) Under the self-assessment regime, the Noticee has the onus of correctly assessing the goods and the duties leviable. The Noticee has mis-classified the goods and not paid the correct duty amount.
- (c) The Noticee has deliberately not paid the duty by wilful mis-statement and has attempted to take undue benefit amounting to Rs. 55,29,431/-.

**13.6** It is pertinent to note that SCN claims to have been issued with a consultative letter to the Noticee. However, the Noticee was never in receipt of any Consultative Letter. The Noticee also submitted letters dated 16.10.2023 and 26.10.2023 placing on record that no Consultative Letter has been received by them and requesting for the same to be provided to them.

**13.7** At the outset, it is submitted that the Noticee does not agree with the allegations made in the impugned SCN and the proceedings initiated vide the impugned SCN are liable to be dropped on the basis of following submissions, which are made without prejudice to each other.

**13.8 CERTAIN UNDISPUTED FACTS**

**13.8.1** The following facts are relevant and undisputed:

- (a) The goods in question are Multimedia Speakers and the period of import is from 26.09.2018 to 24.06.2019. The goods are classifiable under Tariff Heading 8518 and the same is not challenged by the Department.
- (b) As is evident from the Bills of Entry and Tariff rate extract, the Noticee discharged BCD at standard rate of duty @10% and without availing benefit of any notification (specifically of Sr. No. 18 in Notification No. 57/2017-Cus. dated 30.06.2017).
- (c) No Consultative Letter has been received by the Noticee.

**13.8.2 NO EXEMPTION BENEFIT HAS BEEN CLAIMED BY THE NOTICEE AND THE NOTICEE HAS PAID THE CORRECT CUSTOMS DUTY AT THE TARIFF RATE OF DUTY PRESCRIBED IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975.**

**13.8.3** The entire basis of the current proceedings and case of the Department, as evident from the impugned SCN, is that the Noticee has incorrectly availed benefit of Sr. No. 18 of Notification No. 57/2017-Cus. dated 30.06.2017 for the imports in question.

**13.8.4** In this regard, the Noticee submits that benefit of Notification No. 57/2017-Cus. dated 30.06.2017 has not been claimed. This is further substantiated in the paras below:

**Tariff Rate and rate of duty under the Notification prior to 26.09.2018**

**Table A: Tariff Rate prior to 26.09.2018**

Tariff Item	Description	Standard Rate of Duty
8518	MICROPHONES AND STANDS THEREFOR:	



	<b>LOUDSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES: HEADPHONES AND EARPHONES, WHETHER OR NOT COMBINED WITH A MICROPHONE, AND SETS CONSISTING OF A MICROPHONE AND ONE OR MORE LOUDSPEAKERS: AUDIO-FREQUENCY ELECTRIC AMPLIFIERS: ELECTRIC SOUND AMPLIFIER SETS</b>	
	- Loudspeakers, whether or not mounted in their enclosures :	
8518 22 00	-- Multiple loudspeakers, mounted in the same enclosure	10%

**Table B: Notification No. 57/2017-Cus. dated 30.06.2017 (as amended by Notification No. 22/2018-Cus dated 02.02.2018) prior to the amendment by Notification No. 69/2018-Cus. dated 26.09.2018.**

Sr. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate
18.	8518	All goods other than the following parts of cellular mobile phones, namely :-  (i) Microphone  (ii) Wired Headset  (iii) Receiver	10%

Tariff Rate and rate of duty under the Notification on or after 26.09.2018

**Table C: Tariff Rate on 26.09.2018**

Tariff Item	Description	Standard Rate of Duty
8518	<b>MICROPHONES AND STANDS THEREFOR: LOUDSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES: HEADPHONES AND EARPHONES, WHETHER OR NOT COMBINED WITH A MICROPHONE, AND SETS CONSISTING OF A MICROPHONE AND ONE OR MORE LOUDSPEAKERS: AUDIO-FREQUENCY ELECTRIC AMPLIFIERS: ELECTRIC SOUND AMPLIFIER SETS</b>	
	- Loudspeakers, whether or not mounted in their enclosures :	
8518 22 00	-- Multiple loudspeakers, mounted in the same enclosure	10%

**Table D: Notification No. 57/2017-Cus. dated 30.06.2017 as amended by Notification No. 69/2018-Cus. dated 26.09.2018.**

Sr. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate
18.	8518	All goods other than :-  (i) Speakers, and;  (ii) the following parts of cellular mobile phones, namely :-  (1) Microphone;  (2) Wired Headset; and  (3) Receiver	10%

**13.8.5** From a perusal of the above, it is evident that Tariff Rate of duty for the period in dispute i.e. from 26.09.2018 to 24.06.2019 was @ 10%. Further, the Tariff Rate was increased from 10% to 15% for Tariff Item 8518 2200 vide the Finance (No. 2) Act, 2019, with effect from 01.08.2019 (much after the period in dispute).

**13.8.6** Further, as is evident from the Bills of Entry, BCD in the instant case was paid at the standard rate of 10% (as prescribed in the first schedule to the Customs Tariff Act, 1975) and no benefit of exemption notification was availed. In other words, the Noticee did not avail the benefit of any exemption Notification.

**13.8.7** Thus, the proposal in the SCN for payment of duty @15% as per amended Notification No. 69/2018-Cus. dated 26.07.2018 is not plausible when the standard Tariff rate of duty itself is 10% and the Noticee has not availed benefit of any notification. The standard rate of duty was amended to 15% on 01.08.2019, which is after the period of import in the present case. Therefore, the correct standard Tariff rate of duty leviable for the speakers imported by the Noticee is 10%.

**13.8.8** Thus, the SCN proposing to demand of differential duty is incorrect and liable to be dropped on this ground alone.

**13.9 ALTHOUGH, SCN CLAIMS TO HAVE ISSUED CONSULTATIVE LETTER, HOWEVER, THE NOTICEE HAS NOT RECEIVED ANY SUCH CONSULTATIVE LETTER.**

**13.9.1** It is submitted that the allegation in the impugned SCN that a Consultative Letter was issued to the Noticee and they have failed to reply to such letter is false and incorrect.

**13.9.2** As mentioned in the foregoing paras, the Noticee is not in receipt of any such Consultative Letter and therefore evidently no reply/submissions were made by the Noticee to the Department. Without issuing a Consultative Letter to the Noticee and granting the Noticee with an opportunity to respond to such letter, the Department has issued the impugned SCN against the Noticee, stating that a Consultative Letter was issued but the Noticee has failed to respond.

**13.9.3** Vide letters dated 16.10.2023 and 26.10.2023 it was brought to the notice of the Department that the Noticee is not in receipt of the Consultative Letter referenced in the impugned SCN. Therefore, the contention that the Noticee was in receipt of the Consultative Letter but did not respond to it is incorrect.

**13.10 DEMAND OF DIFFERENTIAL DUTY INVOKING EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) OF THE CUSTOMS ACT IS INCORRECT IN THE PRESENT CASE.**



13.11 The impugned SCN contends that the Noticee has engaged in the suppression and willful misstatement and has therefore proposed to invoke the provisions of Section 28(4) of the Customs Act to demand differential duty under the extended period of limitation. However, the Noticee submits that the invocation of Section 28(4) is without any basis and is liable to be dropped as the conditions for invocation of the Section have not been satisfied.

13.12 It is submitted that the Noticee has not engaged in any collusion, suppression of facts or wilful misstatement. The entire case of the Department is that the Noticee has deliberately evaded the payment of duty by availing undue benefit of Notification No. 57/2017-Cus. dated 30.06.2017. However, as explained in the foregoing paras, the Noticee has not availed the benefit of any Notification and has paid BCD as per the standard tariff rate.

13.13 Furthermore, the Department allegedly issued a Consultative Letter in terms of Section 28(1) of the Act, therefore the demand should have been in terms of Section 28(1) of the Act. However, it is submitted that merely because the SCN was issued to the Noticee after the period of two years that the demand is now being invoked under Section 28(4), even though the grounds for invoking the same are not satisfied. Section 28(1) of the Customs Act is extracted below:

***"Section 28. Recovery of duties not levied or not paid or short-levied or short- paid] or erroneously refunded. –***

***1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any willful 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."***

13.14 Section 28(4) of the Customs Act reads as follows:

***"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 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."*

13.15 The Noticee submits that Section 28(4) of the Customs Act can be invocable only if three ingredients are present:

- (i) Collusion; or
- (ii) Any wilful misstatement; or
- (iii) Suppression of facts

13.16 The impugned SCN has alleged that the Noticee has deliberately not paid the duty by wilful misstatement as it was his duty to declare the correct applicable rate of duty. Accordingly, the impugned SCN proposes to demand duty from the Noticee under Section 28(4) of the Customs Act.

13.17 In this regard, the Noticee submits that the very basis on which Section 28(4) has been invoked against the Noticee is baseless. A case to invoke the said provision has not been made by the Ld. Commissioner.

13.18 It is submitted that the primary fact that is required to be established before invoking Section 28(4) of the Customs Act is that the importer was involved in collusion, wilful misstatement or suppression of facts which lead to the short payment of duty.

13.19 In order to understand what constitute mis-statement and suppression, specific reliance is placed on the judgment of Hon'ble Supreme Court in the case of ***Padmini Products vs. Commissioner of Central Excise, 1989 (43) E.L.T. 195 (S.C.)***, wherein the judgment of the Supreme Court in ***Commissioner of Central Excise vs. Chemphar Drugs and Liniments, 1989 (40) E.L.T. 276 (S.C.)*** was followed and it was held that in order to constitute suppression or misstatement attracting extended period of limitation something positive other than mere inaction or failure on the part of the assessee or conscious or deliberate withholding of information, when the assessee knew otherwise, is required to be established.

13.20 Thus, it is submitted that in order to constitute willful suppression, the following needs to be established:

- (i) **Knowledge:** Assessee was in possession of certain information/ documents, which the department did not have.
- (ii) **Belief:** Assessee knew that if information/ documents are given to department, then the assessment will be different resulting in higher duty liability.
- (iii) **Deliberate With-holding:** Still, the assessee deliberately does not give information/ documents to the department.

13.21 In the case of ***Aban Lloyd Chiles Offshore Ltd. v. Commissioner of Customs, 2006 (200) ELT 370 (SC)***, in the context of a demand under Section 28 of the Customs Act, the Hon'ble Supreme Court held as under:



*"20. The proviso to Section 28 can be invoked where the payment of duty has escaped by reason of collusion or any willful mis-statement or suppression of facts. So far as 'mis-statement or suppression of facts' are concerned, they are qualified by the word 'willful'. The word 'willful' preceding the words 'mis-statement or suppression of facts' clearly spells out that there has to be an intention on the part of the assessee to evade the duty.*

*21. ... There is no averment that the duty of excise had been intentionally evaded or that fraud or collusion had been practiced or that the assessee was guilty of willful mis-statement or suppression of fact. In the absence of any such averments in the show-cause notice it is difficult to understand how the Revenue could sustain the notice under the proviso to Section 11-A(1) of the Act."*

*22. It was held that the show cause notice must put the assessee to notice which of the various omissions or commissions stated in the proviso is committed to extend the period from six months to five years. That unless the assessee is put to notice the assessee would have no opportunity to meet the case of the Department. It was held:*

*"...There is considerable force in this contention. If the department proposes to invoke the proviso to Section 11A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said sub-section are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso...."*

*23. In the present case we find that in the show cause notice it is not alleged that duty of custom could not been levied or paid by reason of collusion or willful mis-statement or willful suppression of facts. The Noticees were not put to notice which of the various omissions or commissions stated in the proviso were committed by them to extend the period of limitation from six months to five years. The Noticees having not been put to notice did not have the opportunity to meet the case of the Department."*

*...Emphasis supplied.*

13.22 Similarly, in the case of *Cosmic Dye Chemical vs. Collector of Central Excise, Bombay, 1995 (75)*

*ELT 721 (SC)*, in the context of a demand under Section 11A of the Central Excise Act, 1944, the Hon'ble Supreme Court held as under:

*"6. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word 'willful' preceding the words 'mis-statement or suppression of facts' which means with intent to evade duty. The next set of words 'contravention of any of the provisions of this Act or Rules' are again qualified by the immediately following words 'with intent to evade payment of duty'. It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be willful."*

*...Emphasis supplied*

13.23 Further, the terms 'suppression' has been subject matter of interpretation of courts in a catena of cases. The courts have very clearly and consistently held that these terms in the context of fiscal statute

means 'intentional', 'willful' or 'deliberate' act / omission on the part of an assessee to evade the payment of duty.

**13.24** In *Collector of Central Excise vs. H.M.M. Ltd., 1995 (76) E.L.T. 497 (S.C.)*, the Supreme Court held that mere non-disclosure of certain items assessable to duty does not tantamount to the mala fides elucidated in the proviso to Section 11A(1) of the Central Excise Act, 1944 (*pari materia* to section 28(4) of the Customs Act, 1962). The court held:

*"2... The mere non-declaration of the waste/by-product in their classification list cannot establish any willful withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be, counsel contended, bona fide belief on the part of the assessee that the said waste or by-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was the intention to evade payment of duty or that the assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11A(1) of the Act. There is considerable force in this contention..."*

**13.25** In *Coimbatore vs. The Collector of Central Excise, Coimbatore, 2003 (152) E.L.T. 39 (S.C.)*, the Supreme Court held :-

*"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, willful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or willful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."*

**13.26** The Noticee submits that the ratio of the above cited decisions is that term misdeclaration/suppression as appearing in the Customs Act needs to be 'wilful', 'intentional' or 'deliberate' to evade the payment of duty. Unless such intent is proved on the Noticee, the case cannot be covered within the ambit of misdeclaration.

**13.27** It is settled law that to invoke the larger period of limitation under the proviso to Section 28(4) of the Customs Act, the importer ought to have indulged in some deliberate act of omission or commission with intent to evade the payment of duty. Reference in this regard is made to the decision of the Hon'ble Supreme Court in *Pahwa Chemicals Private Limited vs. Commissioner of Central Excise, Delhi, 2005 (189) E.L.T. 257 (S.C.)*.

**13.28** Based upon the above referred judgments it can be said that to invoke extended period under Section 28 of the Customs Act, it has to be proved that there was a conscious or intentional act of collusion, wilful misstatement or suppression of fact, on the part of the importer.



13.29 The Noticee submits that it is settled law that the onus is on the department to prove that the Noticee has wilfully mis-declared or suppressed facts with intent to evade payment of duty. However, the department failed to prove that the Noticee has acted with any *mala fide* intent. Further, there is nothing on record to show the existence of fraud, collusion or suppression of materials facts or information. Therefore, Section 28(4) is not invocable. Reliance is placed on the following decisions in support of the above submission:

- a) *Shahnaz Ayurvedics v. CCE – 2004 (173) ELT 337 (All), affirmed in 2004 (174) ELT A34 (SC)*
- b) *Devans Modern Breweries Ltd. v. CCE - 2006 (202) ELT 744 (SC)*

13.30 Furthermore, the Noticee submits that the conclusions drawn by the Ld. Commissioner in the impugned SCN are insufficient to invoke the provisions of Section 28(4) of the Customs Act. Reliance in this regard is placed on the Hon'ble Supreme Court's decision in *Continental Foundation v. CCE [supra]* Reliance is also placed on the decision of *Pushpam Pharmaceuticals Pvt. Ltd. v. Collector of C.Ex. Bombay 1995 (78) ELT 401 (SC)*, wherein the Hon'ble Supreme Court held that Section 28(4) can be invocable only when there is a **strong deliberate omission** along with wilful misstatement and suppression. Further, the Noticee submits that Section 28(4) can be employed only when fraud, collusion is established on the part of the assessee. Relevant extract is reproduced below:

*"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different than what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*

*...Emphasis Supplied*

13.31 Since, the instant case does not involve one of suppression or collusion or wilful misstatement, it is submitted that the invocation of Section 28(4) is ex-facie erroneous and is liable to be dropped.

13.32 It is submitted that all the relevant information for the import of the goods in question is available in the Bills of Entry filed by the Noticee. It is evident from the BOEs that the goods were imported at the Tariff rate of duty and no notification was availed by the Noticee. Thus, neither additional intelligence was required, nor a case of suppression can be made against the Noticee.

13.33 In view of the above submissions, the Noticee submits that none of the ingredients required to invoke Section 28(4) are present in the instant case.

13.34 In light of the above, it is submitted that the Demand ought to have been invoked in terms of Section 28(1) of the Act within 2 years from the alleged Consultative Letter that was issued to the Noticee as claimed in the impugned SCN. Section 28(4) cannot be invoked merely because the Department failed to issue an SCN within the prescribed time limit of 2 years.

**13.35 CONFISCATION OF THE IMPORTED GOODS IS NOT WARRANTED UNDER SECTION 111(m) AND SECTION 111(o) OF THE CUSTOMS ACT.**

13.35.1 The imported goods are proposed to be held liable for confiscation under Section 111(m) and/or Section 111(o) of the Customs Act in the impugned SCN on the ground that the Noticee has incorrectly paid the basic customs duty on the imported goods.

13.35.2 At the outset, the Noticee submits that mere short payment of duty will not render the goods liable for confiscation.

Confiscation under Section 111(m) of the Act not sustainable:

13.36 The Noticee submits that the imported goods are not liable to confiscation under section 111(m) of the Act.

***"Section 111. 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;"***

13.37 The Hon'ble Supreme Court in **Northern Plastic Ltd. v. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)]** has held that merely claiming the benefit of exemption or a particular classification under the bill of entry does not amount to mis-declaration under section 111(m) of the Act. Therefore, even if the Noticee was claiming the benefit of an exemption notification, the same would not amount to mis-declaration. However, when the Noticee has paid the duty at the Tariff rate applicable, it cannot be said that there is any mis-declaration. The goods correspond with the Bill of Entry made for the import of the goods.

13.38 The Noticee also relies on **Kirti Sales Corpn. v/s. Commissioner of Customs, Faridabad, reported at [2008 (232) ELT 151 (Tri.-Del.)]**, wherein the Hon'ble Tribunal has held that to attract the provisions of Section 111(m), the *mis-declaration should be intentional*. The Hon'ble Tribunal in this case held as under:



*"6. We are inclined to accept the case of the Revenue that the goods imported were texturized fabric. However, whether the declaration in the Bill of Entry amounts to 'misdeclaration' so as to attract the provisions of Section 111(m) of the Customs Act in a given case depend upon the facts of the case. To constitute 'misdeclaration', the declaration must be intentional. Misdeclaration cannot be understood as same as wrong declaration, of course, made bona fide, the possibility of which cannot be ruled out altogether. The question, therefore, is whether the appellant had intentionally and deliberately mis-declared the goods as non-texturized fabric rather than texturized fabric. On this point, we are inclined to accept the case of the Appellants that the declaration had been made on the basis of documents supplied by the foreign supplier and there was no intentional or deliberate wrong declaration or misdeclaration on its part so as to attract the mischief of Section 111(m) of the Customs Act. The facts of the case in the instant case... .."*

**13.39** Further, the description specified by the Noticee is correct and the same is not disputed by Customs. Given the same, the Noticee's actions are bonafide and no malafide intention can be attributed to them. Reliance in this regard is placed on the Tribunal's decision in **C. Natvarlal & Co. v. CC (Import), Mumbai**, wherein it has been clearly held that even under the self-assessment regime, when the description given in the Bill of Entry is correct, mis-declaration cannot be alleged.

**13.40** In view of the above submissions, it is submitted that mis-declaration cannot be alleged by the Department so long as the description given in the Bill of Entry is correct. In the instant case, the Noticee had given the description of the imported goods correctly. No attempt has been made by the Noticee to mis-declare the goods. Hence, the imported goods cannot be held liable to confiscation under Section 111(m) of the Act.

**13.41** The Noticee places further reliance on the case of **Porcelain Crafts and Components Exim Ltd. vs. CC, Calcutta, 2001 (138) ELT 471 (Tri. – Kolkata)**, wherein it was observed that confiscation of the goods can be ordered only when there is positive evidence to prove *mala fides* on the part of the importer. In the present case, the SCN fails to disclose or rely on any positive evidence to prove *mala fides* on the part of the Noticee.

**13.42** Therefore, it is submitted that the proposal for holding the goods liable for confiscation under Section 111(m) of the Customs Act is legally not sustainable and liable to be dropped.

**Confiscation under Section 111(o) of the Act is not sustainable**

**13.43** As per the Impugned SCN, the imported goods are liable for confiscation under Section 111(o) of the Act, for wrongful availment of exemption notification by non-observance of condition.

**13.44** Relevant portion of Section 111(o) of the Act is reproduced below:

*"SECTION 111. Confiscation of improperly imported goods, etc. — The following goods brought from a place outside India shall be liable to confiscation: -  
(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;"*

**13.45** The SCN alleges that the Noticee has failed to comply with Notification obligation. The SCN has alleged that the Noticee has wrongfully availed benefit of Notification No. 57/2017-Cus. dated 30.06.2017. However, as submitted in the foregoing paras, the Noticee has not availed benefit of any notification and has paid the basic customs duty leviable as per the standard Tariff rate of duty as prescribed in the First Schedule to the Customs Tariff Act, 1975.

**13.46** Therefore, in light of the fact that the Noticee has not availed the benefit of any Notification in the first instance, non-observance of Notification condition cannot be alleged. Therefore, confiscation in terms of Section 111(o) of the Act is not sustainable.

**13.47 NO PENALTY CAN BE IMPOSED ON THE NOTICEE UNDER SECTION 112 A AND/OR SECTION 114A OF THE CUSTOMS ACT.**

Penalty under Section 112(a) of the Act is not imposable:

**13.47.1** The Ld. Commissioner of Customs has proposed to impose penalty under Section 112(a) of the Customs Act, 1962. For ease of reference, Section 112 is reproduced herein as under:

***SECTION 112. 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*

**13.47.2** A reading of Section 112 shows that penalty under the said Section is imposable on a person who deals with the goods or is in possession of any knowledge which renders the goods liable for confiscation.

**13.48** It is submitted that the Noticee has committed no offence or made no omissions or commissions in the entire matter. Moreover, the penalty under Section 112 of the Customs Act, 1962 can be imposed only an act or omission has been committed which would render the goods are liable to confiscation. It has been narrated in the foregoing paras that the Noticee is not guilty of any of such omission and therefore, no penalty can be imposed on the Noticee under Section 112(a) of the Customs Act, 1962

Penalty under Section 114A of the Act is not imposable:

**13.49** The impugned SCN has imposed penalty under Section 114A on the Noticee on the ground that the Noticee has indulged in suppression and wilful misstatement. However, it is submitted that as



demonstrated in the above grounds, there is no case of suppression and wilful misstatement in the present case and hence penalty under Section 114A is unsustainable.

**Ingredients for levying penalty under Section 114A have not been satisfied:**

13.50 It is submitted that the ingredients for levying penalty under Section 114A has not been satisfied in the present case. The relevant portion of Section 114A of the Act is reproduced below:

*“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 (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined”*

13.51 From a reading of the above provisions, it is evident that levy of penalty under Section 114A is linked to confirmation of demand under Section 28 of the Act and the same ingredients as are applicable for invoking extended period under the proviso to Section 28(4) of the Act are applicable for levy of penalty under this Section as well. As submitted in aforementioned grounds, there was no collusion or any willful misstatement or suppression of facts on the part of the Noticee and therefore the imposition of penalty under Section 114A is not sustainable in law.

13.52 Without prejudice to the above, it is submitted that the conduct of the Noticee was *bona fide*. The Noticee neither had any intention to evade payment of duty and in the absence of any mala fide on the part of the Noticee, no penalty is imposable.

13.53 In the case of *Hindustan Steel Ltd. v. State of Orissa [1978 (2) ELT (J159) (SC)]*, Hon'ble Supreme Court held that no penalty should be imposed for technical or venial breach of legal provisions or where the breach flows from the *bona fide* belief. Relevant portions of the judgment are reproduced below:

*“An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.”*

**...Emphasis Supplied**

13.54 Following the above judgment, in the case of *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales Tax [1980 (6) ELT 295 (SC)]*, Hon'ble Supreme Court held that penalty cannot

be imposed when an assessee raises a contention of *bona fide*. It is submitted that the conduct of the Noticee in the present case was totally *bona fide* and therefore no penalty is imposable.

13.55 The bona fide intention of the Noticee can be corroborated with the fact that the Noticee made payment of the applicable Tariff rate of duty of 10%. Hence, the impugned SCN is liable to be dropped.

**Penalty cannot be imposed on the Noticee as there was no intention to evade duty:**

13.56 Without prejudice to the above submissions, it is submitted that in terms of various decisions of the Hon'ble Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the assessee in absence of *mens rea* on part of the assessee. It is a settled law that when an assessee is under a *bona fide* belief that the correct duty is paid, penalty cannot be imposed on the assessee, if ultimately it is found that the exemption is not available.

**14. Records of Personal Hearings (PH)**

In terms of principle of natural justice, Personal Hearing (PH) was granted to the Noticee on 20.05.2025. In response to the said hearing the representative of the importer appeared for the personal Hearing (PH) and reiterated that they have not availed any exemption and reiterated their earlier submission.

14.1 Accordingly, correspondence was initiated with the NS-V Commissioner vide letter dated 31.07.2025 regarding the verification of claims submitted by the importer. A reminder email was subsequently sent on 01.09.2025. However, as per records available to date, no response has been received

**DISCUSSIONS AND FINDINGS**

15. The case involves the following 01 Noticee :

Noticee-I ( M/s. KUNHAR PERIPHERALS PRIVATE LIMITED) ,

16. As discussed above, I have followed the principle of natural justice by providing an adequate number of personal hearings in the subject case. Accordingly, I am proceeding further. I have examined all the case records including the Show Cause Notice (SCN), the defence replies from the noticees and their submissions made during the personal hearings(PH). Based on the SCN and the noticees' submissions and available records in file, the following issues need to be determined in this adjudication:

- (i) Whether differential/short paid Duty amounting to ₹ 55,29,431/- for the subject goods imported vide Bills of Entry as detailed in Annexure- 'A' to the SCN ( Table –A) should not be demanded under Section 28(4) of the Custom Act, 1962.



- (ii) In addition to the duty short paid, whether interest on delayed payment of Custom Duty should not be recovered from the Importer under section 28AA of the Customs Act, 1962.
- (iii) Whether the said subject goods imported vide Bills of Entry as detailed in Annexure- 'A' to the SCN (Table-A) having assessable value of ₹ 8,51,99,240.59/- should not be held liable for confiscation under Section 111(m) and/or 111(o) of the Customs Act, 1962.
- (iv) Whether penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962 for their acts of omission and commission, in rendering the goods liable for confiscation, as stated above.
- (v) Whether penalty should not be imposed under Section 114A of Customs Act, 1962 for short levy of duty.

17. I find that the SCN has alleged that importer have imported goods having description as "Speaker" under the CTH 8518 as detailed in Table -A above. The importer has paid BCD @10%, However, the imported goods attract BCD @ 15%. The exemption claimed by importer is not available for speakers.

18. The SCN further alleges that the Bills of Entry (as per Annexure-A to the SCN) (Table-A) wherein goods have been classified under CTH 8518 attract levy of BCD as per Table-C. However, they have been cleared under lower rate of BCD. As per Notification No. 57/2017-Cus dated 30.06.2017 as amended by Ntfn. 69-2018-Cus. dated 26-09-2018, following changes in effective Basic Customs Duty have been made:-

**TABLE-C**

(Effective BCD Rate on CTH-8518)

S. No.	Ntfn.	Chapter or Heading or Subheading or tariff item	Description of goods	Standard Rate (Ntfn.)	Condition No.
18	Ntfn.57/2017-Cus. dated 30.06.2017 <i>Amended by Ntfn.69/2018-Cus. dated 26.09.18</i>	8518	All goods other than (i) Speakers, and; (ii) The following parts of cellular mobile phones namely : - (1) Microphone (2) Wired Headsets ; and (3) Receiver	10%	-

19. The SCN further alleges that Consequent upon the above notifications, it is amply clear that Sr No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (*amended by Ntfn. 69-*

2018-Cus. dated 26-09-2018) applies to All goods other than speakers and the following Parts of cellular Mobile phones

- i. Microphone
- ii. Wired Headsets
- iii. Receiver

Therefore, the imported goods being Speakers do not qualify for the exemption of BCD under Sr No. 18 of Customs Notification No. 57/2017-Cus. dated 30.06.2017 (*amended by Nfn. 69-2018-Cus. dated 26-09-2018*).

20. The Noticee has submitted that the subject Bills of Entry relate to the importation of multimedia speakers during the period from 26th September 2018 to 24th June 2019. These goods have been consistently classified under Tariff Heading 8518, specifically under HSN Code 85182200, which includes loudspeakers designed for multimedia use, including those equipped with built-in amplifiers. Importantly, this classification has not been contested or disputed by the Department at any stage. The Noticee has further pointed out that the applicable Basic Customs Duty (BCD) rate for goods falling under Tariff Item 8518 2200 during the relevant period was 10%. They have also clarified that the duty rate was increased from 10% to 15% only pursuant to the Finance (No. 2) Act, 2019, which came into effect from 1st August 2019. This amendment clearly occurred subsequent to the period under consideration in the present case, thereby confirming that the 10% BCD rate was applicable during the importation of the subject goods.

21. I have thoroughly examined Annexure-A appended to the Show Cause Notice (SCN), as detailed in Table A above as well as the submission made by importer. Upon review, I observe that the goods under scrutiny pertain to Multimedia Speakers, imported within the period spanning from 26th September 2018 to 24th June 2019.

22. It is pertinent to note that these goods are classified under Tariff Heading 8518, a classification which has not been contested or disputed by the Department in any manner. For further clarity and reference, the specific Harmonized System of Nomenclature (HSN) code applicable to the goods in question is 85182200.

23. To elucidate, the HSN code 85182200 encompasses loudspeakers which are specifically designed and used as multimedia speakers, including those incorporating built-in amplifiers. The classification appears to be in accordance with the Customs Tariff Act and the applicable legal framework governing import classifications and is not under the dispute as per the SCN.

24. The details of HSN code 85182200, as reproduced below, regarding the categorization of the imported goods



<b>Tariff Item</b>	<b>Description</b>
8518	<b>MICROPHONES AND STANDS THEREFOR: LOUDSPEAKERS, WHETHER OR NOT MOUNTED IN THEIR ENCLOSURES: HEADPHONES AND EARPHONES, WHETHER OR NOT COMBINED WITH A MICROPHONE, AND SETS CONSISTING OF A MICROPHONE AND ONE OR MORE LOUDSPEAKERS: AUDIO-FREQUENCY ELECTRIC AMPLIFIERS: ELECTRIC SOUND AMPLIFIER SETS</b>
	- Loudspeakers, whether or not mounted in their enclosures :
8518 22 00	-- Multiple loudspeakers, mounted in the same enclosure

25. Further, upon examination, I find that the merit rate of Basic Customs Duty (BCD) applicable to the subject goods falling under Tariff Item 8518 2200 during the period from 26th September 2018 to 24th June 2019 was 10%. It is pertinent to note that the rate of duty for the said Tariff Item was revised from 10% to 15% only through the Finance (No. 2) Act, 2019, which came into effect from 1st August 2019—clearly after the period under consideration in the present case. For ease of reference, the relevant extract from the Finance (No. 2) Act, 2019, reflecting this amendment is reproduced below:

“(iii) for the entry in column (4) occurring against tariff items 8518 21 00 and 8518 22 00, the entry ‘15%’ shall be substituted;”

26. I have also examined the Bills of Entry along with their corresponding details, and some of the key information extracted from these documents is reproduced below for ease of reference. The following pertains to three representative entries, which clearly reflect the classification, declared rate of duty, and the absence of any exemption or preferential claim at the time of assessment:

(Custn Stri: INISAT) CHA : AAACA369HCH001 (ANEYA CLEARING AGENCY PVT LTD.)  
BE No/Dc./cc/Type:20375776/17042610 /N/H ODC HS/Dt/Officer:2032758763/23.04.2013/19034469  
Importer Details:3194010456 PAN : AAAGD6246FT001 AD Code : 64809064  
KUMMAR PERIPHERALS PVT LTD  
WAREHOUSE NO.5, GAT NO.2324/1, VEL  
LAGE, WAGHOLI, TAL. HAVELI,  
PUNE, MAHARASHTRA 412207 Payment Method : Transaction

IGH No.	222232716/04/2019	18/04/2019	Port Of Loading	Shenkou
Entry Of Origin	CHINA		Entry Of Consign.	
BL No.	ONEPSY36906500		H/L No.	FOIN55940862
Date	04/04/2019		Date	04/04/2019
No. Of Pkgs.	001 PCS		Gross Wt.	5422.000 KGS
Remarks	AS PER B/L			
	6 Nos			

Inv No & Dc. :	201901012	11/03/2019	WONGHONG THIEHSHEUNG ELECTRIC CO LHM	
Inv Val :	28701.80	USD TOL: FOB	1STD ROOM 408B-1 4 FLOOR NO 23 LIPP	
Freight :	300.00	USD	0 SUN PLAZA CAUTION ROAD TSEM SHA TS	
Insurance :	485.00	DNR	UT KOWLOON WONGKONG, CHINA	
SVL Load(As):		Cust. House:	CHINA	
SVL Load(Dry):		HSS Load Rate:	0.60	Amount: 0.60
Misc. Charges:	0.00		0.00	
		Discount Rate:	0.60	Discount Amount: 0.00
EDD :	0.60	XSE Duty FG Int.:	0.50	
Third Party:				

BuyerSeller: Reltd : No

Item Details

Exchange rates: 1.00 USD = 67.4500 DM.

S/No	R/TC	Description	CTH	C. Motn C. HSN	ASP	Exs Qty R	Loss	PRO
Qty		Unit Price					Exh ant(Rs)	
Unit		Ass Val	CTH	E. Motn E. HSN		Exc Qty R	Cx ant(Rs)	
1	85182200	MULTIMEDIA BLUETOOTH SPEAKER(W/USB/TF/PIVBT/MIC)						
ODEL BT900(BRAND ARTIS)	(WPC ART CERT HSNR:ETA/7572-RD/MR)							
451.00	25.066000	85182200			10.00 %		82307.38	
PCS	823072.73	NOEXCISE			0.00 %		0.00	
	Educational Cess on CVDs				0.00 %		0.00	
Sec & Higher Edu. Cess on CVD					0.00 %		0.00	
Customs Educational Cess					0.00 %		0.00	
Customs Sec & Higher Edu. Cess					0.00 %		0.00	
Social Welfare Surcharge:					10.00 %		8230.76	
IGST			001/2017	III380	18.00 %		154449.61	
GST Cess			001/2017	56	0.00 %		0.00	
Rs.	823072.73			Page Total		Rs.	254987.99	

### Declaration

1. I/we Certify that the above entries are correct.  
2. I/we further declare that wherever the RSP is applicable, same has been truthfully declared.

CHA

AMEYA CLEARING AGENCY PVT. LTD.

Signature

Importer

KUNHAR PERIPHERALS PVT LTD

Signature

DOC Given By: (Arun Kumar  
(Examiner

Examiner



**F. No. S/10-135/2023-24/Commr/CAC/ NS-V/JNCH**  
**SCN No. 1361/2023-24/Commr/Gr. VA/CAC/JNCH dated 22.09.2023**

Duplicate (Importer copy)  
 Indian Customs EDI System - Imports V1.5R001  
 JNCH, NHAVA SHEVA, TAL:URAN, DIST-RAIGAD-40070  
 BILL OF ENTRY FOR HOME CONSUMPTION

[Custom Stn: INNSA1] CHA : AAACA3309HCH001 [AMEYA CLEARING AGENCY PVT.LTD.]  
 BE No./Dt./cc/Typ:230320/20032019 /N/H OOC No./Dt/Officer:2032428177/29-03-2019/10032:  
 Importer Details :3194010430 PAN : AABCK6420AFT001 AD Code : 6480004  
 KUNHEAR PERIPHERALS PVT LTD  
 WAREHOUSE NO.6, GAT NO.2324/1,,VIL  
 LAGE, WAGHOLI, TAL. HAVELI,  
 PUNE, MAHARASHTRA 412207 Payment Method : Transaction

IGM No :2220213/22/03/2019 27/03/2019 Port Of Loading :Shekou  
 Cntry Of Orgn.: CHINA Cntry Of Consign.:  
 BL No : RDMUHKWB1648731 H/BL No : STPMAYG2496  
 Date : 14/03/2019 Date : 14/03/2019  
 No. Of Pkgs. : 1110 CTN Gross Wt. : 16130.000 KGS  
 Marks:AS PER B/L  
 & Nos

Inv No & Dt. : SH20181120C 18/02/2019 SAGE HUMAN ELECTRONICS INTERNATIONAL  
 Inv Val : 121307.89 USD TOI: FOB L CO.,LTD. 4 FLOOR,A BUILDING,RONGEL  
 Freight : 550.00 USD I INDUSTRY PARK,NO.2 GULI, YUAN ROAD  
 Insurance : 1933.00 INR , GUICHUA COMMUNITY, GUANLAN TOWN, LONG  
 SVB Load(Ass): Cust. Houses: CHINA  
 SVB Load(Dty): HSS Load Rate: 0.00% Amount: 0.00  
 Misc. Charges: 0.00 0.00  
 EDD : 0.00 Discount Rate: 0.00 Discount Amount: 0.00  
 Third Party: XEE Duty FG Int.: 0.00

Buyer/Seller Reltd : No  
 Item Details  
 Exchange rate: 1.00 USD = 71.0000 INR

Sino	RITC	Description	CTH	C.No	C.NSMO	RSP	Load	PROV
Qty		Unit Price				Cus Dty Rt	BCD amt(Rs)	
Unit		Ass Val	CEH	E.No	E.NSMO	Exc Dty Rt	CVD amt(Rs)	
1	85182200	MULTIMEDIA BLUETOOTH SPEAKER WITH BT/AUX-IN/USB(MO						
		DEL BT99) (BRAND ARTIS) (WPC REGD NO.NR-ETA/7552-RLO(NR))						
14202.00	6.033000	85182200				10.00 %	611227.50	
PCS	6112275.30	NOEXCISE				0.00 %	0.00	
		Educational Cess on CVDs :				0.00 %	0.00	
		Sec & Higher Edu. Cess on CVD :				0.00 %	0.00	
		Customs Educational Cess :				0.00 %	0.00	
		Customs Sec & Higher Edu. Cess :				10.00 %	61122.80	
		Social Welfare Surcharge:				18.00 %	1221232.62	
		IGST	001/2017	III360		0.00 %	0.00	
		GST Cess	001/2017	36				
Page Total							Rs. 1893582.90	
Ra. 6112275.30								

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of duty can be sustained upon the importer. Therefore, the proceedings initiated on this ground is liable to be dropped in toto.

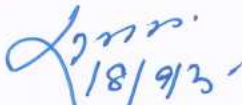
28. In view of the above discussions, I do not find any merits in the instant SCN and thus, the differential duty demanded under Section 28(4) of the Customs Act, 1962 along with interest is not sustainable in the eyes of law and the same merits to be dropped. As a result, the confiscation proposed under Section 111(m) and/or 111(o) of the Customs Act, 1962 as well as the penal provisions invoked under section 112(a) and/or Section 114A of Customs Act, 1962 are also not sustainable. Thus, the entire proceedings are liable to be dropped.

**ORDER**

29. Accordingly, I pass the following order:

I drop the proceedings initiated in the Show Cause Notice 1361/2023-24/Commr./Gr-VA/CAC/JNCH dated 22.09.2023; against the Noticee KUNHAR PERIPHERALS PRIVATE LIMITED (IEC - 03194010450).

30. This order has been passed without prejudice to any other action that may be taken against the above-mentioned firm under the provisions of the Customs Act, 1962, and/ or any other law, for the time being in force in India.

  
(KUMAR AMRENDRA NARAYAN)  
Commissioner of Customs (Import-II),  
New Customs House, Mumbai Zone-I

To,  
**M/s KUNHAR PERIPHERALS PRIVATE LIMITED**  
**407, NUCLEAS MALL, 4TH FLOOR,,1, CHURCH ROAD, PUNE, MAHARASHTRA-411001**  
Copy to:

1. The Chief Commissioner of Customs, Zone-I, NCH
2. The Commissioner of Customs, NS-V, Zone-II, JNCH
3. The Dy. Commissioner of Customs, Gr. VA, JNCH, Mumbai.
4. Notice Board (CHS Section).
5. The Dy. Commissioner of Customs, Circle- D1, Audit, JNCH
6. Office Copy.
7. Guard File.