



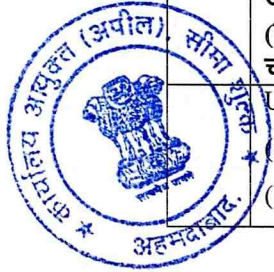
सीमाशुल्क (अपील) आयुक्तका कार्यालय, अहमदाबाद
 OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
 चौथीमंजिल 4th Floor, हडको बिल्डिंग HUDCO Building, ईश्वर भुवन रोड़ Ishwar Bhuvan Road,
 नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
 दूरभाष क्रमांक Tel. No. 079-26589281
 DIN-20250571MN000000F177

क	फाइल संख्या FILE NO.	S/49-240/CUS/AHD/2023-24
ख	अपीलआदेश संख्या ORDER-IN-APPEAL No. (सीमाशुल्कअधिनियम, 1962 की धारा 128क के अंतर्गत) (UNDER SECTION 128A OF THE CUSTOMS ACT, 1962):	AHD-CUSTM-000-APP-39-25-26
ग	पारितकर्ता PASSED BY	SHRI AMIT GUPTA Commissioner of Customs (Appeals), AHMEDABAD
घ	दिनांक DATE	21.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER - IN - ORIGINAL NO.	O.I.O. No. 35/ADC/VM/O&A/2023-24, dated 18.05.2023 passed by the Additional Commissioner of Customs, Ahmedabad.
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	21.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. B. N. Engineering Works, B/10/3, Zaveri Industrial Estate, Behind Kathwada GIDC Estate, Singarva Road, Kathwada, Ahmedabad - 382 430.

1.	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है. This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं. Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :

(क)	बैगेज के रूप में आयातित कोई माल.				
(a)	any goods imported on baggage.				
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.				
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.				
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.				
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.				
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :				
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :				
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.				
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.				
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो				
(b)	4 copies of the Order - In - Original, in addition to relevant documents, if any				
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां				
(c)	4 copies of the Application for Revision.				
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथासंशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्षके अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु.1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क मांगा गया ब्याज लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु.200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु.1000/-				
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs. 200/- (Rupees two Hundred only) or Rs. 1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs. 200/- and if it is more than one lakh rupees, the fee is Rs. 1000/-.				
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं				
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :				
	<table> <tr> <td>सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ</td><td>Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench</td></tr> <tr> <td>दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016</td><td>2nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016</td></tr> </table>	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench				
दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr. Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016				
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-				
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -				

(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10 % अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10 % अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.



ORDER-IN-APPEAL

1. M/s. B. N. Engineering Works, B/10/3, Zaveri Industrial Estate, Behind Kathwada GIDC Estate, Singarva Road, Kathwada, Ahmedabad - 382 430 (hereinafter referred to as the 'appellant') have filed the present appeal against the Order-In-Original No. 35/ADC/VM/ O&A/2023-24 dated 18.05.2023 (hereinafter referred to as the 'impugned order') passed by the Additional Commissioner of Customs, Ahmedabad (hereinafter referred to as the 'adjudicating authority').

2. Facts involved in the appeal, in brief, are that the appellant had imported used Plastic Injection Molding Machines (hereinafter referred to as the 'impugned goods') falling under Customs Tariff Item No. 84771000 and filed following Bills of Entry at ICD, Sanand, Ahmedabad:

Table-1

Sr. No.	Bill of Entry No. & Date	Particulars of foreign supplier	Country of Origin mentioned in the BoE as well as Supplier's Invoice	Out of Charge Date
1	3607925 dated 11.06.2019	Swein Enterprise Co. Ltd., Taoyuan City, Taiwan	Taiwan	24.06.2019
2	9676865 dated 23.11.2020	Swein Enterprise Co. Ltd., Taoyuan City, Taiwan	Taiwan	04.12.2020

3. The impugned goods were cleared on payment of Customs duties, but Anti-Dumping Duty (hereinafter also referred to as 'ADD') was neither assessed in the Bills of Entry nor paid by the appellant. Subsequently, on analysis of data related to imports under CTI 84771000 it was revealed that the impugned goods originating in or exported from **Chinese Taipei** attract ADD as per Notification No. 09/2016-Cus (ADD) dated 15.03.2016 (hereinafter referred to as the 'impugned Notification'). Therefore, vide letter dated 02.03.2022, the appellant was asked to pay the applicable ADD along with interest. The appellant, vide letter dated 05.03.2022, replied that the imported machines are of **Taiwan** Origin and in the said Notification "**Taiwan**" is not mentioned and so, as per their knowledge, ADD is not leviable.

4. Vide another letter dated 08.04.2022, it was communicated by the Customs Department to the appellant that the word "Chinese Taipei" is the term used in various international organizations and tournaments for groups representing the Republic of China, a sovereign state commonly known as "Taiwan". Further, in an informal setting, the term Taiwan is directly used, while Chinese Taipei is used strictly as a formality. The World Trade Organization, the World Health Organization etc. were using the term "Chinese Taipei". Thus, the appellant was again asked to pay the ADD with interest.

5. As the appellant has not paid the ADD, a Show Cause Notice bearing F.No. VIII/10-45/ICD-SND/O&A/HQ/2022-23 dated 03.11.2022, was issued, *inter alia*, for demand and recovery of ADD amount of Rs.7,39,765/- along with IGST amount of Rs.1,33,158/-, totaling to Rs.8,72,923/-, under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA and penalties under Section 112(a) & 112(b) and/or 114A *ibid*.

6. The said SCN has been adjudicated vide the impugned order. The adjudicating authority observed that as per the Notification No. 09/2016-Cus (ADD) dated 15.03.2016, all kinds of Plastic Processing Machines or Injection Moulding Machines used for processing or moulding of plastic materials, having clamping force not less than 40 tonnes and equal to or less than 3200 tonnes, falling under CTH 84771000, originating in or exported from Chinese Taipei, Philippines, Malaysia and Vietnam, are leviable to Anti-Dumping Duty at various rates, as per the said Notification. In the impugned order, it has been further observed that it is not in dispute that the goods 'used plastic injection moulding machine' are imported from Taiwan and the Country of Origin of the imported goods is Taiwan. However, the adjudicating authority observed that "Chinese Taipei" representing the Republic of China commonly known as "Taiwan"; and that "Chinese Taipei" is other name of "Taiwan" and thus, ADD is leviable on the impugned goods. The adjudicating authority further observed, the fact that "Chinese Taipei" is "Taiwan" could be ascertained easily in the present information era; and no further discussion is required to prove Taiwan as Chinese Taipei.

7. As regards, the 'relevant date' for the calculation of time-limit for issuing demand under Section 28(4) of the Customs Act, 1962, it has been mentioned in the impugned order that the said SCN issued within 5 years, is not hit by limitation.

8. In view of the above observations, the adjudicating authority has confirmed the demand of Customs Duties amounting to Rs.8,72,923/- under Section 28(4) of the Customs Act, 1962, with interest under Section 28AA, imposed a penalty of Rs.8,72,923/- under Section 114A and imposed a redemption fine of Rs.2,50,000/-, in lieu of confiscation, under Section 125(1) of the Customs Act, 1962.

Being aggrieved, the appellant has filed the present appeal on 18.07.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 18.05.2023 has been shown as 23.05.2023. Thus, the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has submitted self-certified copies of the T.R.6 Challan No. 1163 dated 13.06.2023 for Rs.55,483/- and No. 1189 dated 18/19.07.2023 for Rs.9987/- totally amounting to Rs.65,470/- towards payment of pre-deposit calculated @7.5% of the disputed amount of duty of Rs.8,72,923/-, under the provisions of Section 129E of the Customs Act, 1962. As the appeal has been filed within the stipulated time-limit and with the mandatory pre-deposit, it has been admitted and being taken up for disposal on merits.

10. The appellant has filed the present appeal mainly on the following **grounds of appeal**:

10.1 The impugned order is self-contradictory insofar as the charge of mis-declaration is concerned. Once it is held that "Chinese Taipei" and "Taiwan" are one and the same (though the notification does not contain any such explanation), the declaration made by appellant in the Bills of Entry that the origin of goods is "Taiwan" cannot be treated as incorrect in any manner. Hence, the charge of mis-declaration would not survive. On this basis, the appellant has submitted that the goods are not liable for confiscation under Section 111 (m) of Customs Act, 1962. Consequently, imposition of redemption fine under Section 125 (1) ibid would become untenable in the eyes of law. Even otherwise, goods are not available for confiscation and hence, no fine is leviable.

10.2 Further, it is a settled law that a Notification has to be read plainly and without intentment. The Notification under consideration does not name "Taiwan" nor it would contain an explanation

that "Chinese Taipei" (specified therein) and "Taiwan" (which is not specified) is one and the same. Hence, the appellant having declared Taiwan for which there was neither any mention in the Notification nor EDI system would capture Taiwan for the purpose of charging Anti-Dumping Duty. All material particulars, including goods, were duly examined by the concerned officers and were found tallying. On this ground, the appellant would say and submit that demand of ADD is not tenable in the eyes of law.

10.3 The appellant further submitted that in the eventuality where Ld. adjudicating authority has held that "Taiwan", which was undisputedly declared by appellant in the Bills of Entry, and "Chinese Taipei" specified in the Notification are one and the same, there can be no justification in the charge of mis-declaration and/or suppression for declaring "Taiwan" in the Bills of Entry. Even otherwise, the declaration made by the appellant was on the basis of documents like invoice, bill of lading etc., received from the overseas supplier. Therefore, on this ground also, the appellant submitted that invocation of extended period of limitation is not tenable in the eyes of law.

Personal Hearing:

11. Personal Hearing in this matter was held on 30.04.2025, which was attended by Shri Vikas Mehta, Consultant. He reiterated the submissions made at the time of filing of appeal. Further, vide email dated 30.04.2025 he, *inter alia*, placed reliance on the Order-In-Appeal No. AHD-CUSTM-000-APP-324-24-25 dated 04.03.2025 passed by the then Hon'ble Commissioner of Customs (Appeals), Ahmedabad, in the case of M/s. R. B. Plastic Machines, Ahmedabad. He further submitted that in similar facts and circumstances, it has been *inter alia* held in said Order-In-Appeal that there is no mis-declaration regarding country of origin and the demand is time barred having been issued beyond two years from relevant date. He prayed to give due consideration to the said Order-In-Appeal dated 04.03.2025.

Findings:

12. I have carefully gone through the facts of the case and written as well as oral submissions made by or on behalf of the appellant. I find that two issues are to be decided in the present appeal, as under:

Issue-1: Whether the Country of Origin declared by the appellant as "Taiwan", can be treated as "Chinese Taipei" for the purpose of levy of ADD on the impugned goods.

Issue-2: Whether the impugned order confirming demand of Anti-Dumping Duty by invoking extended period of limitation under Section 28(4) of the Customs Act, 1962, and imposing penalty under Section 114A *ibid*, is legal and proper or otherwise. Further, whether the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962, or otherwise.

Now, I record my findings on each issue, as under.

Issue-1: Regarding Country of Origin

13. I have gone through the said Notification No. 9/2016-Cus (ADD), dated 15.03.2016, and find that under the column (5) regarding "Country of Origin", the name of the Country has been mentioned as "Chinese Taipei" at Sr. Nos. 1 to 4 of the Table therein, without mention of the Country's name as "Taiwan". Whereas, I find that in another Notification No. 79/2011 - Cus, dated 23.08.2011 imposing ADD on Caustic Soda, the Country's name has been shown as "Taiwan (Chinese Taipei)". In the amending Notification No. 46/2016 - Cus (ADD), dated 19.08.2016, to

the Notification No. 79/2011 - Cus, dated 23.08.2011, the country's name has been mentioned as "Chinese Taipei (Taiwan)". Whereas, in the present case, in the Notification No. 9/2016-Cus (ADD), dated 15.03.2016, the name of the Country of Origin has been mentioned as "Chinese Taipei" without mention of the name "Taiwan".

14. I find that "Chinese Taipei" refers to the same geographic and political entity as "Taiwan," but the terms are used in different contexts. "Taiwan" is the common name used to refer to the island and the political entity officially known as the "Republic of China" (not "Peoples Republic of China"). Whereas, the term "Chinese Taipei" used in many international organizations, like the International Olympic Committee, due to political sensitivities surrounding Taiwan's status. In view of the above position, I agree with the findings of the adjudicating authority that "Chinese Taipei" is other name of "Taiwan" and thus, ADD was leviable on the impugned goods. However, due to non-mention of the word "Taiwan" in the Notification No. 9/2016 - Cus (ADD), dated 15.03.2016, it appears that the appellant as well as Customs officers may not be able to know at the time of import and clearance of goods that ADD was leviable on the impugned goods. Thus, I am of the view that the Country of Origin declared by the appellant as "Taiwan" can be treated as "Chinese Taipei" for the purpose of levy of ADD on the impugned goods.

Issue-2: Regarding extended period of limitation and imposition of fine and penalty

15. In the present case, the 'relevant date' for calculation of time-limit under the provisions of Section 28 of the Customs Act, 1962, is the date of 'out of charge' of respective Bills of Entry, as prescribed in the Explanation 1(a) to Section 28 of the Customs Act, 1962. The said dates are as under:

Table-2

No.	Bill of Entry No. & Date	Differential duty demanded	Out of Charge Date	Date of Show Cause Notice	Remarks
1	3607925 dated 11.06.2019	Rs.4,39,841	24.06.2019	03.11.2022	SCN issued beyond normal period of 2 years
2	9676865 dated 23.11.2020	Rs.4,33,082	04.12.2020	03.11.2022	SCN issued within normal period of 2 years
	TOTAL	Rs.8,72,923			

16. Text of the relevant provisions Section 28 of the Customs Act, 1962, is reproduced below (underline supplied):

"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 has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —

(a) the proper officer shall, within [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been

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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;]

... ..

(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.

... ..

(10B) A notice issued under sub-section (4) shall be deemed to have been issued under sub-section (1), if such notice demanding duty is held not sustainable in any proceedings under this Act, including at any stage of appeal, for the reason that the charges of collusion or any wilful misstatement or suppression of facts to evade duty has not been established against the person to whom such notice was issued and the amount of duty and the interest thereon shall be computed accordingly.

... ..

Explanation 1. - For the purpose of this section, "relevant date" means -

(a) in a case where duty is not levied or not paid or short-levied or short-paid or interest is not charged, the date on which the proper makes an order for clearance of goods;

... .. "

17. From the above-mentioned statutory provisions, it is very clear that for issuing SCN under Section 28(4) of the Customs Act, 1962, there should be "collusion" or "wilful mis-statement" or "suppression facts" on part of the appellant. In the impugned order, it has been held that the appellant has made wilful mis-declaration with intent to evade payment of duty. So, I shall examine whether the appellant had given any wilful mis-statement or mis-declaration, which



resulted into non-payment of ADD. I find that in the Commercial Invoice Nos. SW20190508, dated 08.05.2019 and SW20201019, dated 19.10.2020, both issued by M/s. Swein Enterprise Co. Ltd., Taoyuan City, Taiwan R.O.C., the Country of Origin has been mentioned as "Taiwan". In the respective Bills of Lading, the Port of Loading has been mentioned as "Keelung, Taiwan". In both the Bills of Entry, the Country of Origin, has been declared as "Taiwan". Thus, I find that the appellant has declared the Country of Origin as "Taiwan" and as the country "Chinese Taipei" and "Taiwan" are one and same, I am of the considered view that the appellant even after knowing the said fact wilfully paid lower duty.

18. The issue regarding applicability of extended period of limitation, for wilfully paying lower duty is no more res-integra and the same has been settled. Suffice it would be to place reliance on the below decisions.

18.1 It is settled law that whether there was suppression of facts is a question of fact and not of law - Whether a party is guilty of suppression of facts or not is a question of fact. It does not per se give rise to substantial question of law - Kushal Fertilisers v. CCE (2009) 238 ELT 21 (SC) - relying on Larsen & Toubro v. CCE (2007) 8 STT 403 = 211 ELT 513 (SC).

18.2 From the above judgements, I hold that there can be no straight jacket formulae to determine whether extended period can or cannot be invoked in a particular case and the same being a question of fact has to be decided on a case to case basis. I further observe that, there is no estoppel in law in taxation matters and merely because a view is taken earlier does not imply the same to be perpetuated in all times in the future. I place reliance on the case of Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs Union of India And Others (1983 (13) E.L.T. 1566 (S.C.)) wherein the Hon'ble Supreme Court held that there is no estoppel in law against a party in a taxation matter.

"40. There is, however, no estoppel in law against a party in a taxation matter."

From the above, I find that mis declaring the country of origin or payment of short duty amounts to wilful mis declaration for which extended period of limitation can be invoked against the importer.

18.3 In Visen Industries Ltd. Versus Commissioner Of Customs (2017 (354) E.L.T. 319 (Guj.)) the Hon'ble Gujarat High Court confirmed the invocation of extended period when exemption was claimed due to incorrect declaration of country of origin. The relevant para's thus:

"2.1 The assessee had imported a chemical called Butyl Acrylate Monomer sometime in September, 2006. As per the then prevailing policy, if the origin of the goods was Singapore, under exemption notification 73/2005, the importer would be spared customs duty. The assessee claiming that the origin of import was Singapore claimed and was granted such exemption. The goods were supplied through one Marubeni Chemicals Asia Pacific Private Limited. However, the Customs authorities in India received intelligence from Singapore that the said agency had forged the certificate of origination of goods. The goods had actually originated from Taiwan and Korea but were falsely claimed to have originated from Singapore for claiming exemption. It appears that upon

receipt of such intelligence, investigation also commenced at the hands of the Customs authorities on 28-12-2006.

...

4. In the result, appeal is dismissed."

The above view has attained finality as the taxpayer appeal is dismissed by the Hon'ble Supreme Court in *Visen Industries Ltd. v. Commissioner - 2018 (360) E.L.T. A184 (S.C.)*.

18.4 In *Sun Microsystems India P. Ltd. Versus Commissioner Of Cus., Bangalore (2016 (339) E.L.T. 475 (Tri. - Bang.))* the Hon'ble Tribunal upheld the extended period and penalty where in an attempt to pay lesser Customs duty, imported goods were consciously undervalued and necessary facts as to various agreements between the assessee and supplier were suppressed. It was also held that since the extended period was invocable on establishment of suppression of facts, mandatory penalty under Section 114A of Customs Act, 1962 was imposable.

18.5 Similarly, the imposition of extended period was upheld by the Hon'ble Tribunal in *Montana Valves & Compressors (P) Ltd. v. Commissioner (2000 (116) E.L.T. 220 (Tribunal))* on account of deliberate act of the taxpayer. The said view has attained finality as the Hon'ble Supreme Court has dismissed the appeals in *Montana Valves & Compressors (P) Ltd. v. Commissioner (2002 (145) E.L.T. A164)*.

19. In the impugned order, it has been alleged that it was the responsibility of the appellant to properly self-assess the duty; and as they had not made proper self-assessment and not paid the ADD, there was mis-declaration and intention to evade payment of duty. I find that the reasoning given in the impugned order to invoke extended period of limitation is proper and legal. I agree that in this era of self-assessment, it was the responsibility of the appellant to properly self-assess the duty under Section 17(1) of the Customs Act, 1962 and when incorrect exemption is claimed due to wrong country of origin the department is not precluded from invoking the extended period of limitation.

20. In the present case also, the appellant has clearly failed to discharge ADD even after fully knowing that the goods were imported from *Chinese Taipei* and subject to the ADD. Therefore, I am of the considered view that the charge regarding willful mis-declaration on part of the appellant is sustainable and extended period of limitation under Section 28(4) of the Customs Act, 1962, is invocable in the present case.

21. I also observe that antidumping duty is a trade remedy measure designed to countenance dumping, imposition of which is authorised under the WTO Agreement, to which India is a signatory, and also under the national law. Its economic rationale is that with greater liberalisation of international trade, domestic industry needs to be protected against unfair trade practices. Thus, it is of utmost significance to levy such duty to save the domestic industry from dumping and give them a level playing field. In *CCE v. G M Exports (2015) 1 SCC 91 = 62 taxmann.com 184 = 324 ELT 209 (SC)* it was held that anti-dumping law is a salutary measure which prevents destruction of our industries.

22. In the impugned Notification, the name of the country "Taiwan" has not been mentioned, instead the name "Chinese Taipei" has been mentioned. Whereas, in another Notification No. 79/2011-Cus dated 23.11.2011 imposing ADD on Caustic Soda, the name of country has been shown as "Taiwan (Chinese Taipei)". In the impugned order, it has been observed that the fact

that "Chinese Taipei" is "Taiwan" could be ascertained easily in the present information era. Under this situation, I find that there is sufficient justification for invoking extended period of limitation and demand ADD from the Appellant.

23. In view of the above position, I am of the view that invocation of provisions of Section 28(4) for demand of Customs duty is sustainable in the present case. In this regard, I also place reliance on the decision of the Hon'ble Gujarat High Court in Pooja Tex Prints Pvt. Ltd. Versus Addl. Commr. Of C. Ex. & Cus. & S.T., Surat-I (2019 (365) E.L.T. 42 (Guj.)) wherein demand was confirmed invoking extended period when evasion was deliberate.

Discussion regarding Redemption Fine and Penalty


24. As regards imposition of penalty and fine, I find that in the SCN, penalty has been proposed under the provisions of Section 112(a) & 112(b) and/or 114A of the Customs Act, 1962. In Para 13.12 of the impugned order, fifth proviso to Section 114A has been referred, which prescribes that where any penalty has been levied under Section 114A, no penalty shall be levied under Section 112 or Section 114. As the adjudicating authority has imposed equal penalty under Section 114A, no penalty has been imposed under Section 112 in the impugned order due to the fifth proviso to Section 114A. Now, as I have upheld the duty demand under Section 28(4), I confirm the penalty under Section 114A inasmuch as both provisions relate to non-payment of duty on account of collusion or wilful mis-statement or suppression of facts, which are applicable in this case. Since the demand invoking extended period is upheld, the proposal regarding confiscation of goods under Section 111(m) is also found to be sustainable and also the order for imposition Redemption Fine in lieu of confiscation under Section 125 of the Customs Act, 1962, found to be sustainable.

25. In view of the above discussion, I pass the following Order.

Order:

I reject the appeal filed by the appellant and uphold the impugned Order-In-Original No. 35/ADC/VM/O&A/2023-24, dated 18.05.2023 passed by the Additional Commissioner of Customs, Ahmedabad.




(AMIT GUPTA)
Commissioner (Appeals)
Customs, Ahmedabad

Date: 21.05.2025

F.No. S/49-240/CUS/AHD/2023-24

By e-mail [As per Section 153(1)(c) of the Customs Act, 1962]

To
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Singarva Road, Kathwada,
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Copy to:

1. The Chief Commissioner of Customs, Ahmedabad Zone, Customs House, Ahmedabad.
(email: ccoahm-guj@nic.in)
2. The Pr. Commissioner of Customs, Ahmedabad. (email: cus-ahmd-guj@nic.in , rra-customsahd@gov.in)
3. The Additional Commissioner of Customs, Ahmedabad (email: cus-ahmd-adj@gov.in)
4. The Deputy/Assistant Commissioner of Customs, ICD-Sanand, Ahmedabad (email: customs-sanand@gov.in)
5. Guard File.

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