



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.
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PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-208/ ICD-SND/O&A/HQ/2024-25
B	कारण बताओ नोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	VIII/10-208/ICD-SND/O&A/HQ/2024-25 dated 15.10.2024
C	मूल आदेश संख्या/ Order-In-Original No.	:	272/ADC/SRV/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	05.03.2025
E	जारी करनेकी तारीख/ Date of Issue	:	05.03.2025
F	द्वारापारित/ Passed By	:	SHREE RAM VISHNOI, ADDITIONAL COMMISSIONER
G	आयातक का नाम औरपता / Name and Address of Importer / Passenger	:	M/S SUZUKI MOTOR GUJARAT PVT. LTD. BLOCK NO. 334/335, PLOT NO. 334 AND 335, SURVEY NO. 293, VILLAGE HANSALPUR, NR. BECHARAJI, TALUKA- MANDAL, AHMEDABAD, GUJARAT-382130
(1)	यह प्रति उन व्यक्तियों के उपयोग के लिए निःशुल्क प्रदान की जाती है जिन्हे यह जारी की गयी है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्ति की तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क(अपील), चौथी मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये का न्यायालय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को 7.5 % (अधिकतम 10 करोड़) शुल्क अदा करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, 1962 की धारा 129 के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

BRIEF FACTS OF THE CASE:

M/s. SUZUKI MOTOR GUJARAT PVT. LTD. having their registered address situated at Block No. 334/335, Plot No. 334 and 335, Survey No. 293, Village Hansalpur, Nr. Becharaji, Taluka- Mandal, Ahmedabad, Gujarat-382130 (hereinafter referred to as “M/s. SMG” or “the importer” or “the noticee” or “the auditee” for the sake of brevity) with **IEC 0815005687**, are importing “Returnable Rack” (hereinafter referred

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to as "imported goods" or "impugned goods" for the sake of brevity) cleared at Thar dry port, Sanand, Ahmedabad under the classification Customs Tariff Item (CTI) 73269099 of the First Schedule to Customs Tariff Act, 1975.

2. It had been observed that M/s. Suzuki presented Bills of entry as per Annexure A to the show-cause notice, for clearance of "Returnable Rack" which was imported with the declared assessable value of Rs. 30,80,587/- and classified them under the classification Customs Tariff Item (CTI) 73269099 of the First Schedule to Customs Tariff Act, 1975.

3. It had been observed during premise-based audit of the importer by the Commissioner of Customs (Audit), New Customs House, Ballard Estate, Mumbai and further analysis of the data, that **M/S SUZUKI MOTOR GUJARAT PVT. LTD. (IEC 0815005687)**, having classified the imported goods under Customs Tariff Item (CTI) 73269099 has claimed benefit of notification no. 104/94-Cus dated 16.03.1994 (hereinafter referred to as "the notification") and paid nil BCD and IGST at the time of import.

3.1 In terms of the provisions of Notification No. 104/94-Cus, the exemption to packing material is subject to the condition that the same are re-exported within a period of six (06) months from the date of their importation. The said notification makes provision for extension of such time limit in cases which merit sufficient cause for delay. The relevant provisions of the said notification are reproduced under for ease of reference:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

(a) the whole of the duty of customs leviable thereon under the said First Schedule; and

(b) the whole of the integrated tax under sub-section (7) of section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit."

4. During the course of said Audit, it had been observed that the importer failed to re-export the imported goods i.e. returnable Racks used as packing material before completion of six month in certain cases as per Annexure-A to the Show Case Notice. It also appeared that though the said notification provides for extending the time frame of re-export, the importer had neither sought for such extension from the competent authority nor shown any cause for the delay. Thus, it appeared that the conditions of Notification No. 104/94-Cus. have not been fulfilled in the instant case. In case of a conditional exemption notification, the benefit of exemption under the said notification is not admissible if the conditions spelt out therein are not fulfilled. In the instant case, it appeared that the importer have failed to fulfill the conditions of Notification No. 104/94-Cus and as such the benefit of exemption under the said notification is inadmissible in respect of the returnable racks covered under the Bills of Entry as per Annexure-A to this Show Case Notice.

5. It appeared that non-fulfilment of the condition of the notification made the imported goods attract the provisions of Section 143 of the Customs Act, 1962, which reads as under:-

“Section 143. Power to allow import or export on execution of bonds in certain cases.

(1) Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the Assistant Commissioner of Customs or Deputy Commissioner of Customs is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the Assistant Commissioner of Customs or Deputy Commissioner of Customs approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.

...

(3) If the thing is not done within the time specified in the bond, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.”

5.1 In view of the above, by not fulfilling the condition of the notification, the importer has made themselves ineligible for the exemption and liable to Customs duty i.e. BCD @ 10% with 10% SWS and IGST @18% amounting to **Rs. 9,54,366/- (Rupees Nine Lakh Fifty-Four Thousand Three Hundred Sixty-Six Only)** as per Annexure-A.

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6. Accordingly, a Consultative letter No. **864** vide F. No. **CADT/CIR/ADT/PBA/167/2023-THBA-CIR-C3** dated 26.07.2024 was issued to the importer by the Assistant Commissioner of Customs (Audit), New Customs House, Ballard Estate, Mumbai, apprising them of non fulfilment of the condition of the notification and requesting the payment of the differential duty along with applicable interest.

7. In response to above, the importer vide letter dated 05.08.2024 submitted that:

- i. They are importing motor vehicle parts from Japan, which are packed in durable natural steel racks (impugned goods) and that these racks are returnable and declared under notification No. 104/94-Cus dated 16.03.1994 and are to be re-exported within six (06) months from the date of import.
- ii. They failed to re-export the same due to Covid-19 pandemic as the several restrictions were in place on the operations of the company.
- iii. They have been in receipt of one SCN issued by Customs Ahmedabad Commissionerate for similar issue, wherein the adjudicating authority dropped the proceedings against the importer.
- iv. Once the item was let to be exported that itself means that the time period is extended.

8. The importer had executed RE-Bonds, as detailed at Annexure-A binding themselves to re-export the said returnable racks within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Deputy/Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so. However, it is observed that the importer have neither re-exported the same on-time, nor paid the Customs duty leviable thereon in terms of the Bonds executed by them. At this juncture, it is to mention that the term "Bond" is not defined under the Customs Act, 1962. However, the same has been defined under Sub-section (5) of Section 2 of the Indian Stamp Act, 1899 as under:

"(5) "Bond" – "Bond" includes—

- (a) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;*
- (b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and*
- (c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another;"*

Likewise, Section 2(d) of The Limitation Act, 1963 defines the term 'Bond' as under:

"(d) "bond" includes any instrument whereby a person obliges **himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;**"

8.1 In light of the definition of the term 'Bond' it is expressly clear that the importer has undertaken the obligation to pay Customs Duty alongwith Interest in the event of non-fulfillment of export obligation. Such act of the importer to the effect of not paying Customs Duty alongwith Interest tantamount to dishonoring the Bond executed by them.

9. From foregoing paras, it also appeared that the importer was well aware of the fact that the benefit of Customs Notification No 104/94-Customs dated 16.03.1994 is available with the time constraints of six month for the export of the same. Hence, there appeared to be a willful intention on the part of the Noticee by delaying the export of the returnable rack out of the time limit and not seeking any extension for the same. Accordingly, the action of the importer to wrongful claim of notification benefit on the impugned goods appeared to be an act of willful mis-statement and the improper action of the importer warrants action for recovery of duty under Section 28(4) of the Customs Act, 1962 read with Section 143 of the Customs Act, 1962.

10. Relevant Legal Provisions are as under:-

10.1 SECTION 28 OF CUSTOMS ACT, 1962:

"Recovery of duties not levied or short-levied 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 willful mis-statement; or*
- c. suppression of facts,*

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

10.2 SECTION 46 OF CUSTOMS ACT, 1962:

"17. Assessment of duty.--(1) 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."

Section 46 (4) & (4A) of the Customs Act, 1962 states that:

"Section 46. Entry of goods on importation. -

(4) The importer while presenting a bill of entry shall 12 [* * *] 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, 13 [and such other documents relating to the imported goods as may be prescribed].

(4A) The importer who presents a bill of entry shall ensure the following, namely:-

- (a) the accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]"

10.3 SECTION 28AA OF CUSTOMS ACT, 1962:

"Interest on delayed payment of duty-(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and
- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]"

10.4 SECTION 111 OF CUSTOMS ACT, 1962:

“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,”

10.5 SECTION 114A OF CUSTOMS ACT, 1962:

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

10.6 SECTION 112 OF CUSTOMS ACT, 1962:

“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

...

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 ¹ [not exceeding the value of the goods or five thousand rupees], whichever is the greater;”

11. With the introduction of the Self-Assessment scheme, the onus is on the importer to comply with the various laws, determine their tax liability correctly and discharge the same. The importer are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by section 17, 18 and 46 of the Customs Act, 1962 and the Bill of Entry (Electronic Declaration) Regulation, 2011. The importer are squarely responsible for self-assessment of duty on imported goods and for filing of all declaration and related documents and confirming that these are true, correct and complete. Self-Assessment can result in assured facilitation for compliant importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the allied Acts.

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12. In view of the above, it appeared that the importer had availed the benefit of exemption under Notification No. 104/94-Cus. One of the conditions laid down in the said exemption Notification is that the importer was required to re-export goods within a period of 6 months, however the importer did not fulfil the conditions by not re-exporting within 06 months and without taking any extension permission. In view of the above, it appeared that the importer have contravened the provisions of Notn. No. 104/94-Cus and as such the benefit of exemption thereunder is not admissible and the Customs duty to the tune of **Rs. 9,54,366/- (Rupees Nine Lakh Fifty Four Thousand Three Hundred Sixty Six Only)** (as detailed at Annexure A to this Show Cause Notice) is liable to be demanded and recovered under Section 28(4) of the Customs Act, 1962 read with Section 143 of Customs Act, 1962, along with applicable interest thereon, under Section 28AA of the Customs Act, 1962. it also appeared that the impugned goods are liable to confiscation in terms of the provisions of Section 111(o) of the Customs Act.

13. In terms of the provisions of Section 112(a) any person, who omits to do any act which act or omission would render such goods liable to confiscation under Section 111, is liable to penalty. In the instant case, the importer have failed to re-export the impugned goods within the stipulated time frame and thereby have rendered such returnable racks under consideration liable to confiscation. Thus, the importer have committed an act which have rendered the returnable racks liable to confiscation and as such the importer have rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962. For same reasons stated herein above, due to duty not levied or short-levied, the Noticee rendered themselves liable for penalty under Section 114A of the Customs Act, 1962.

14. Thereafter, a Show Cause Notice was issued from F. No. VIII/10-208/ICD-SND/O&A/HQ/2024-25 dated 15.10.2024 to M/S SUZUKI MOTOR GUJARAT PVT. LTD., having IEC NO. 081500568, Plot No. 334 and 335 Survey No. 293, Village Hansalpur, Nr. Becharaji, Taluka- Mandal, Ahmedabad, Gujarat-382130 to show cause, to the Additional Commissioner of Customs, Customs House, Navrangpura, Ahmedabad-380009, as to why:

- i. The Benefit of Customs Notification No 104/94-Customs which is available with the time constraints of six month for the export of the same as detailed in Annexure-A to the Show Cause Notice should not be rejected under the provisions of Section 143 of the Customs Act, 1962.
- ii. The impugned goods under said Bill of Entry to this notice, valued at **Rs 30,80,587/- (Rupees Thirty Lakh Eighty Thousand Five Hundred Eighty-Seven Only)** should not be held liable for confiscation in terms of provisions of Section 111 (m) of the Customs Act, 1962
- iii. Customs duty amounting to **Rs. 9,54,366/- (Rupees Nine Lakh Fifty-Four Thousand Three Hundred Sixty-Six Only)** on the impugned goods as detailed in the Annexure-A to the Show Cause Notice should not be

demanded & recovered from them under Section 28(4) of the Customs Act, 1962 read with Section 143 of the Customs Act, 1962;

- iv. Interest thereon in terms of provisions of Section 28 AA of the Customs Act, 1962, should not be demanded & recovered from them
- v. Penalty should not be imposed on the Noticee under Section 112 of the Customs Act, 1962.
- vi. Penalty should not be imposed on the Noticee under Section 114A of the Customs Act, 1962.

WRITTEN SUBMISSION AND PERSONAL HEARING:-

15. In response to the show cause notice, M/s. Suzuki Motor Gujarat Pvt. Ltd. have submitted a written submission dated 29.10.2024, vide which they stated that:-

- The Noticee has correctly availed the exemption, and the department has failed to correctly interpret the concerned Notification. Notification No. 104/94-Cus dated 16.03.2023 provides exemption to the containers of a durable nature. Further, the durable containers are to be re-exported within six months from the date of their importation. On showing sufficient cause the time period may be extended by the proper officer.
- The instant show cause notice has been invoked under Section 143 of the Customs Act which provides for execution of bonds to ensure fulfillment of conditions. Therefore, it is not a demand under Section 28 of the Customs Act following allegation of short payment, non-payment, or evasion of duties but for enforcing the obligations as stipulated in the notification.
- The Noticee has fulfilled the conditions as stipulated in the notification and hence is rightly entitled to the benefit of exemption on the re-export of durable containers/racks.
- Due to the global pandemic, certain import-export transactions of the company were on hold due to various restrictions imposed by the government to prevent the outbreak. Due to the same, the durable racks could not be re-exported within the stipulated time. However, the Noticee was later allowed to re-export the racks. Therefore, it cannot be said that the conditions/obligation of the notification has not been followed by the Noticee.
- Further, in the Noticee's own case vide Order-in-Original No.105/ADC/VM//O&A/2024-25 dated 22.07.2024 passed the Ld. Additional Commissioner of Customs, Ahmedabad wherein the Ld. Additional Commissioner has set aside the duty demand, interest, and penalty.
- Reliance in this regard is also placed on the decision of the Hon'ble CESTAT, New Delhi in the case of M/s. Ribbel International Limited v. CC- 2019 (9) TMI 537- CESTAT New Delhi.
- With respect to 3 Bills of Entry, the Noticee has paid the differential duty along with interest. The copy of the Challans evidencing payment are enclosed.

- In light of the above decision, the impugned SCN under Section 143 of the Customs Act is not sustainable and is liable to be dropped herewith.
- The Noticee has been re-exporting the racks/containers in the past and claiming the benefit of the said Notification. Further, once the containers are allowed to be exported, it has to be understood that the period of re-export has been extended up to the date of said export. Reliance in this regard is placed on the decision of Intermar Shipping Agencies Pvt. Ltd. v. Central Ex., Cus., (A), Kandla, 2014 (314) E.L.T. 557 (Tri. - Ahmd.).
- Post facto permission to re-export the goods were granted to the Noticee by the customs officer. Any permission granted prior to or subsequently would imply granting the permission itself. Reliance in this regard is placed on the decision of Life Insurance Corporation of India v. Escorts Ltd. and Ors- 1986 Supreme Court Cases 264. The above decision of Apex Court was placed reliance on by Hon'ble CESTAT, Mumbai in the case of Hyundai Heavy Industries Co. Ltd. v. Commr. of Cus. (Import), Mumbai- 2006 (205) E.L.T. 841 (Tri. - Mumbai). Therefore, any irregularities cease to exist upon the post facto permit issued in the instant case of re-export of the durable containers.

B.4. Reliance in this regard is placed on the decision in Essar Power Gujarat Ltd. Versus Commissioner of Customs, Jamnagar 2011 (265) E.L.T. 143 (Tri. - Ahmd.).

- By the application of the ratio in the above decisions to the present case, the post facto export permit is expressly applicable to the durable containers. Thus, no law has been violated. In this light, the imported goods cannot be confiscated, and no penalty is imposable on the Noticee.
- Nationwide lockdown was imposed on 24.03.2020 by the Government of India. The lockdown was extended over time and again in lieu of the severe conditions faced in the country. During the period of lockdown, restrictions were imposed in order to avoid spreading the pandemic. Due to the unprecedented times of the Covid-19 pandemic that affected the entire globe, the Noticee Company was unable to re-export some of the racks within the stipulated time as the Noticee Company's plant was not operational along with several other restrictions imposed. Further, the Company sought extension to re-export the racks. The copy of the letter dated 24.08.2020 requesting extension is enclosed.
- The Government of India announced various additional relaxations in order to overcome the unprecedented hardships that were caused due to the pandemic. CBIC vide Circular No. 21/2021-Customs dated 24.09.2021, with the aim of promoting export of laden marine containers, extending the period of 6 months to another 3 months wherein the period of initial 6 months is till or before 31.03.2022. The said circular read with Circular No. 83/98-Customs dated 5.11.1998 provides extension in case of genuine difficulty.
- The decision of the Hon'ble Supreme Court in case of the IN RE: Cognizance for Extension of Limitation, 2022 (1) TMI 385- SC Order shall also be applied for compliance under Notification No. 104/1994-Cus dated 16.03.1994.

- The duty and the interest demanded are not sustainable in law as the global pandemic was an unprecedented event and was beyond the control of the Noticee.
- The exemption notification benefit is available on re export of the durable containers/racks within 6 months of import. Further, the proviso stipulates extension of time on showing sufficient cause to the proper officer. In the instant case, the durable racks were re-exported. However, due to the unprecedented event of the global pandemic, the re-export was slightly delayed. Even in case of delay, the goods were allowed to be re-exported, hence the same was sanctioned by the proper officer. It cannot be said that the Noticee have not fulfilled the condition of the notification.
- Since the goods are not available for confiscation, the redemption fine under Section 125 is not imposable. Section 125 of the Customs Act provides for an option on the part of the importer to redeem the confiscated goods upon payment of redemption fine. It clearly follows that the importer is liable to pay redemption fine only when the goods are confiscated. In the present case, it has been clearly shown in the preceding paragraphs that the confiscation under Section 111 is not applicable. Consequently, any proposal to impose redemption fine is also not sustainable.
- Reliance in this regard is placed on the decisions of Bhagyanagar Metals Ltd. v. C.C.Ex., Hyderabad- 2016 (333) E.L.T. 395 (Tri.- LB); Asia Motor Works v. CC, Kandla- 2020 (371) E.L.T. 729 (Tri.- Ahmd.); C.C.E Ahmedabad-I v. Bhairavi Exim Pvt Ltd.
- It has been demonstrated in the above that the demand for differential duty is not maintainable. Since there is no liability to pay duty, no interest could be charged from the Noticee. E.2. The Hon'ble Supreme Court of India in Prathibha Processors vs. Union of India, 1996 (88) E.L.T. 12 (S.C.), has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest either. The above referred to case is followed by the Hon'ble Supreme Court in the case of Commissioner of Customs, Chennai vs. Jayathi Krishna and Co., 2000 119 ELT 4 SC.
- Penalty under Section 112(a) of the Customs Act can thus only be imposed for doing or omitting to do an act which would render the goods liable for confiscation under Section 111 or abets to do such an act. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of CCE v. H.M.M. Limited, 1995 (76) ELT 497 (SC), CCE, Aurangabad v. Balakrishna Industries, 2006 (201) ELT 325 (SC), CCE & CC. v. Nakoda Textile Industries Ltd., 2009 (240) ELT 199 (Bom.).
- In terms of various decisions of the Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the Appellants in absence of mens rea. Reliance in this regard is placed on the decisions in Hindustan Steel Ltd. Vs. State of Orissa, 1978 (2) ELT (J159) and Akbar Badruddin Jiwani v. Collector of Customs, 1990 (47) ELT 16.

- No duty is payable as the Noticee has fulfilled the obligation of re-exporting the durable racks in order to avail the exemption notification benefit. For the same reasons, no penalty can be recovered under Section 114A. Reliance in this regard is placed on the case of Collector of Central Excise vs. H.M.M. Limited, 1995 (76) ELT 497 (SC), Commissioner of Central Excise, Aurangabad vs. Balakrishna Industries, 2006 (201) ELT 325 (SC).
- In the absence of any wilful misstatement or suppression of facts on the part of the Noticee, provisions of Section 28(4) of the Customs Act are not invokable.
- The element of mens rea is absent from the case in point. The Noticee has correctly declared the impugned goods in the BoEs. They referred the case of Hindustan Steel Ltd. (supra) which was followed by Akbar Badruddin Jiwani vs. Collector of Customs, 1990 (47) ELT 161.

15.1 The noticee was given opportunity to be heard on 25.02.2025, which was attended by Shri Manish Jain, Advocate and Shri Sarvesh Rathi, Authorised Signatory, Suzuki Motor Gujarat Pvt. Ltd. They reiterated their written submission dated 29.10.2024 and requested to consider the same and accordingly pass the order. Further, the noticee submitted an additional written submission on 03.03.2025 interalia reiterating the points mentioned in foregoing para.

DISCUSSIONS AND FINDINGS:

16. I have carefully gone through the show cause notice, written submissions and record of personal hearing in the present case. I find that the show cause notice was issued to M/s. Suzuki Motor Gujarat Pvt. Ltd. due to observations of the audit and available records that the noticee failed to re-export, within time-limit, the said goods imported under Bills of Entry mentioned in Annexure A to the Show Cause Notice. It also appeared that the noticee had not apply for extension of the period for re-export, nor such extension of period for re-export has been allowed to them. I also find that it appeared to the audit that, the said importer had re-exported the said goods after expiry of time limit as against the conditions of Notification No. 104/94-Customs dated 16.03.1994. Therefore, the Customs duty Forgone amount of **Rs. 9,54,366/- (Rupees Nine Lakh Fifty-Four Thousand Three Hundred Sixty-Six Only)** appeared to be recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA read with section 143 of the Customs Act, 1962 in terms of the Notification No. 104/94-Customs. Also, penalty appeared imposable on the importer under Section 112(a)/114A of the Customs Act, 1962 for the acts of omission and commission. Now therefore, the issues before me are to decide:-

- a. Whether the exemption under Notification No. 104/1994-Cus dated 16.03.1994, in respect of Bills of Entry given in Annexure-A to the Show Cause Notice is available to the noticee.

b. Whether the imported goods of declared Assessable value of **Rs. 30,80,587/- (Rupees Thirty Lakh Eighty Thousand Five Hundred Eighty-Seven Only)** are liable for confiscation under Section 111 of the Customs Act, 1962.

c. Whether Duty Forgone amount of **Rs. 9,54,366/- (Rupees Nine Lakh Fifty-Four Thousand Three Hundred Sixty-Six Only)** is recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of provisions of Section 28 AA of the Customs Act, 1962 read with Section 143 of the Customs Act, 1962.

d. Whether penalty is imposable on the importer under Section 112/114A of the Customs Act, 1962.

16.1 Now, I proceed to decide whether the exemption under Notification No. 104/1994-Cus dated 16.03.1994, in respect of Bills of Entry given in Annexure-A to the Show Cause Notice is available to the noticee.

16.1.1 I find that In terms of the provisions of Notification No. 104/94-Cus, the exemption to packing material is subject to the condition that the same are re-exported within a period of six (06) months from the date of their importation. The said notification makes provision for extension of such time limit in cases which merit sufficient cause for delay. The relevant provisions of the said notification are reproduced under for ease of reference:

"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

(a) the whole of the duty of customs leviable thereon under the said First Schedule; and

(b) the whole of the integrated tax under sub-section (7) of section 3 of the said Customs Tariff Act:

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Provided further that in any particular case, the aforesaid period of six months may, on sufficient cause being shown, be extended by the said Assistant Commissioner for such further period, as he may deem fit."

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16.1.2 I further find that in terms of the conditions of Notification No. 104/1994-Cus., the importer is also required to execute a bond, undertaking (a) re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner, or (b) to pay the duty leviable thereon in the event of the importer's failure to do so.

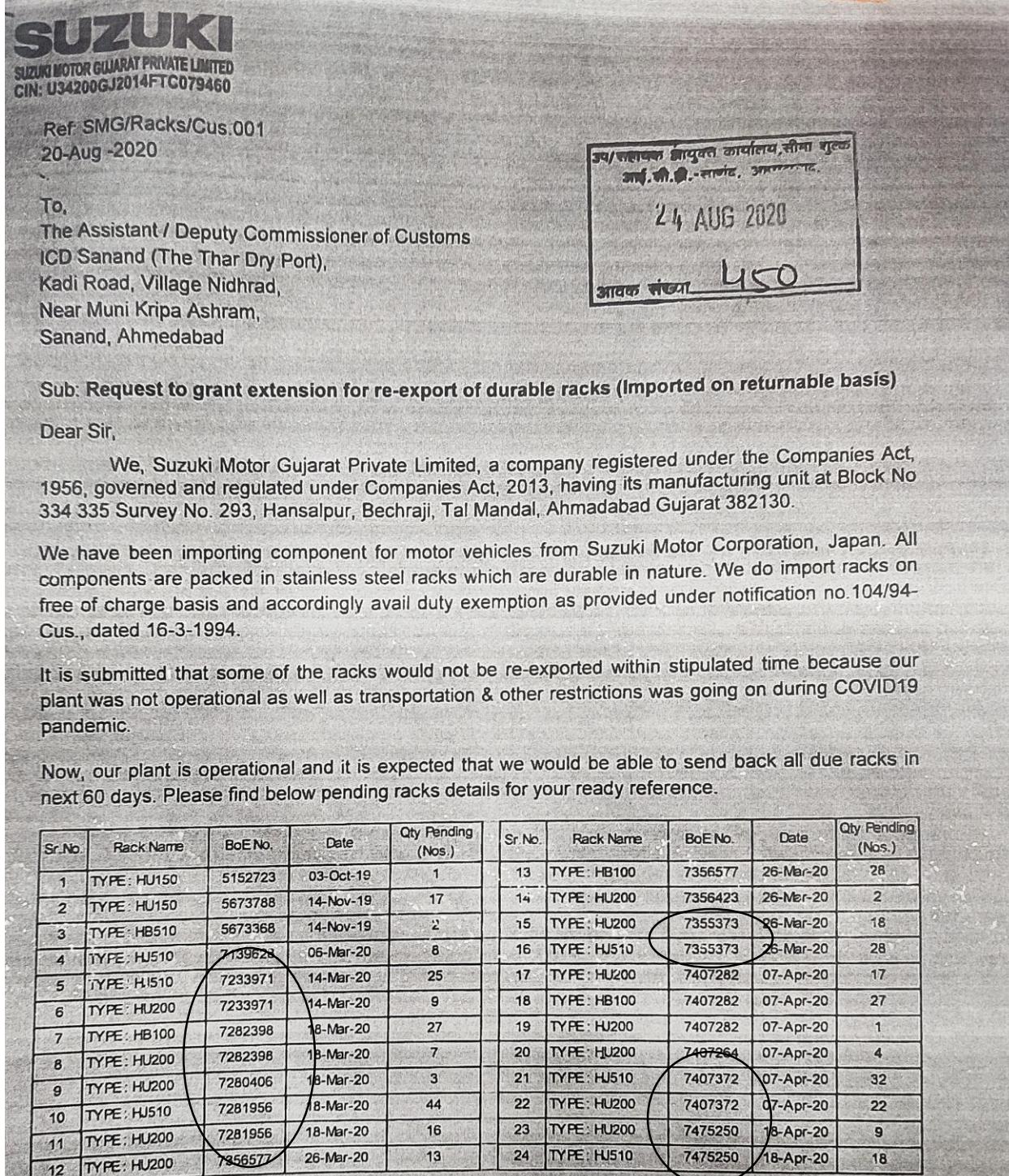
16.1.3 I find from the submissions of the noticee that they had imported Returnable Racks under Bills of Entry as given in Table-1 below, by availing benefit of Notification No. 104/1994-Cus dated 16.03.1994 and also furnished RE-bonds as required. I find that the noticee have submitted that they had applied for extension for the time limit in case of a few Bills of Entry vide their letter dated 20.08.2020. They also submitted that they have paid the duties in respect of 03 Bills of Entry, for which they had not sought any extension as per Table-1.

TABLE-1

Sr. No.	BoE No.	Date	Total Duty	Whether Extension Sought vide letter dated 20.08.2020	Whether Duty paid
1	7233971	14-Mar-20	123779	Yes	No
2	7282398	18-Mar-20	100909	Yes	No
3	7280406	18-Mar-20	5937	Yes	No
4	7281956	18-Mar-20	217783	Yes	No
5	7281956	18-Mar-20	30981	Yes	No
6	7355373	26-Mar-20	131477	Yes	No
7	7407372	07-Apr-20	152898	Yes	No
8	7407372	07-Apr-20	41122	Yes	No
9	7475250	18-Apr-20	87948	Yes	No
10	5327235	17-Oct-19	5366	No	Yes, Vide Challan No. 1502 Dated 23.07.2024
11	2468137	22-Jan-21	51311	No	Yes, Vide Challan No. 1503 Dated 23.07.2024
12	6790637	22-Dec-21	4856	No	Yes, Vide Challan No. 1504 Dated 23.07.2024

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16.1.4 I find that in respect of Sr. No. 10, 11 and 12 of above Table, the noticee have paid the Customs duty along with interest before issuance of the Show Cause Notice. Further, I find that the noticee have applied for extension for Sr. No. 1 to 9 vide letter dated 20.08.2020, an image of which is given below:-



In view of above, you are requested to please accept our request and grant extension for next 60 days.

Thanking you,

Yours faithfully,
For Suzuki Motor Gujarat Private Limited
[Signature]

4/24/20

16.1.5 I find from the Show Cause Notice and from the submission of the noticee that the said imported goods were re-exported after expiry of the time limit of Six (06) months. The noticee has contended that once the containers are allowed to be exported,

it has to be understood that the period of re-export has been extended up to the date of said export and also relied on the decision of the *Hon'ble CESTAT, New Delhi in the case of M/s. Ribbel International Limited v. CC- 2019 (9) TMI 537- CESTAT New Delhi*. I find that in the case of **M/s. Ribbel International Limited (supra)**, the bench had observed that there is no cause for demanding customs duty when the export obligation was fulfilled by the assessee.

16.1.6 I find that for each instance of import of impugned goods, such goods have been re-exported as well even though with delay. This is evident from the fact that for each import of racks through various Bills of Entry a subsequent Shipping bills have also been filed. Further, the Company sought extension up to 60 days for the Bills of Entry at Sr. No. 1 to 9 of Table-1. Further the delay in re-export for Sr. No. 1 to 9 is ranging between 02 days to 49 days.

16.1.7 The noticee also relied upon the case of *Life Insurance Corporation of India v. Escorts Ltd. and Ors- 1986 Supreme Court Cases 264*, where Hon'ble SC held that where the word "permission" is not qualified by the word "prior", the ex post facto permission is also sufficient. I find that although no explicit permission granted to the noticee is *on record* in respect of extension sought by them, yet the impugned goods were allowed to be re-exported by the proper officer.

16.1.8 I find that the Government of India announced various additional relaxations in order to overcome the unprecedented hardships that were caused due to the pandemic. CBIC vide Circular No. 21/2021-Customs dated 24.09.2021, with the aim of promoting export of laden marine containers, extended the period of 6 months to another 3 months wherein the period of initial 6 months is till on or before 31.03.2022. The said circular read with Circular No. 83/98- Customs dated 5.11.1998 provides extension in case of genuine difficulty. In this regard, I find that the decision of the Hon'ble Supreme Court in case of the **IN RE: Cognizance for Extension Of Limitation, 2022 (1) TMI 385- SC** Order shall also be applied for compliance under Notification No. 104/1994-Cus dated 16.03.1994.

16.1.9 I thus find that the contention of the importer that certain import export transactions of the company were on hold due to various restrictions imposed by the government to prevent the outbreak, and hence, the durable racks could not be re-exported within the stipulated time, holds merit. Thus, I find the contentions of the noticee justifiable as the global pandemic was an unprecedented event and was beyond the control of the Noticee.

16.1.10 I find from the above that the noticee have fulfilled their obligations by a) applying for extension within time limit, b) re-exporting the impugned goods and c) payment of duties with interest for the imports, where extension was not sought. Therefore, I hold that the noticee has fulfilled the conditions of the notification and the

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exemption under Notification No. 104/1994-Cus dated 16.03.1994, in respect of Bills of Entry given in Annexure-A to the Show Cause Notice is available to the noticee.

16.2 Now I decide whether the imported goods of declared Assessable value of Rs. 30,80,587/- (Rupees Thirty Lakh Eighty Thousand Five Hundred Eighty-Seven Only) are liable for confiscation under Section 111 of the Customs Act, 1962.

16.2.1 I find from the foregoing Paras that the noticee has fulfilled their conditions of the notification No. 104/1994-Cus dated 16.03.1994, therefore, as per Section 143 (2) –

“(2) If the thing is done within the time specified in the bond, the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.”

16.2.2 I also find that Section 111(o) of the Customs Act, 1962 provides that –

“Section 111 (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;”

16.2.3 I find that a valid justification for the delay in export of the durable racks by the noticee has been provided in their submissions. I also find that the proper officer has allowed re-export of the goods and the impugned goods have since been exported and not physically available for confiscation. As the condition for export of goods has been satisfied there stands no need for confiscation of the impugned goods. I find goods not liable for confiscation under Section 111 of the Customs Act, 1962.

16.3 Now I decide whether Duty Forgone amount of Rs. 9,54,366/- (Rupees Nine Lakh Fifty-Four Thousand Three Hundred Sixty-Six Only) is recoverable under Section 28(4) of the Customs Act, 1962 along with applicable interest in terms of provisions of Section 28 AA of the Customs Act, 1962 read with Section 143 of the Customs Act, 1962.

16.3.1 From the foregoing Paras, I find that the noticee have submitted that they had applied for extension for the time limit in case of a few Bills of Entry vide their letter dated 20.08.2020. They also submitted that they have paid the duties in respect of 03 Bills of Entry. I find that the noticee have fulfilled their obligations by a) applying for

extension within time limit, b) re-exporting the impugned goods and c) payment of duties with interest for the imports, where extension was not sought.

16.3.2 Thus, in the light of the above discussion, the demand of duty is not sustainable in law as the global pandemic was an unprecedented event and was beyond the control of the Noticee. I find that in the instant case, the Noticee could not fulfil the re-export obligation due to COVID pandemic. I hold that as such as discussed in para above, the duty demand for Sr. No. 1 to 9 of the Annexure-A of the Show cause Notice is not sustainable and as such, the demand of interest is also not sustainable.

16.3.3 I also find that the noticee have paid the duties in respect of 03 Bills of Entry. I find that the noticee have not done any deliberate fraud, wilful misrepresentation or conscious non-compliance with statutory requirements, rather paid the duties in respect of Bills of Entry where they have not sought extension before issuance of the Show Cause Notice. I hold that the duties in respect of Sr. No. 10 to 12 of the Annexure-A of the Show cause Notice is recoverable from the noticee and the same being paid along with interest have to be appropriated against such recovery.

16.4 Whether penalty is imposable on the importer under Section 112/114A of the Customs Act, 1962.

16.4.1 The text of section 112 (a) of the Customs act, 1962 is reciprocated 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

(b)

(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;

1/(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:

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under

section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.”

16.4.2 I find that penalty under Section 112(a) of the Customs Act can be imposed for committing or omitting an act which would render the goods liable for confiscation under Section 111 or abets to do such an act. From discussion in para supra, it is evident the noticee have applied for extension of time limit for re-export at Sr. No. 1 to 9 of the Annexure-A of the Show cause Notice and subsequently re-exported the said goods. As discussed in para supra the condition for export of goods has been satisfied there stands no need for confiscation of the impugned goods.

16.4.3 For Sr. No. 10 to 12 of annexure 10 to 12 of the show cause notice, I place reliance of the Hon'ble Supreme Court's decision in case of ***M/s Hindustan Steel Ltd. V/s State of Orissa reported in 1978 (2) E.L.T. (J 159) (S.C.)***, wherein it was established a key principle that penalties should not be imposed unless there is deliberate fraud, wilful misrepresentation or conscious non-compliance with statutory requirements. I find that in terms of various decisions of the Supreme Court and various other High Courts and Tribunals, penalty cannot be imposed on the noticee in absence of *mens rea*. Therefore, I hold that for the reasons mentioned above, the noticee are not liable to penalty under 112 of the Customs Act. Also, the noticee is not liable for penalty under Section 114A due to no suppression or no wilful misrepresentation.

17. Therefore, I pass the following order -

ORDER

- a. I hold M/s. Suzuki Motor Gujarat Pvt. Ltd eligible for benefit under Notification No. 104/1994-Cus dated 16.03.1994, in respect of Bills of Entry given at Sr. No. 1 to 9 in Annexure-A to the Show Cause Notice as discussed in foregoing paras.
- b. I order to demand and recover the Customs duty amounting to Rs. 61533/- (Rupees Sixty One Thousand Five Hundred Thirty Three Only) in respect of Bills of Entry given at Sr. No. 10 to 12 in Annexure-A to the Show Cause Notice under Section 28 of the Customs Act, 1962 along with applicable interest in terms of provisions of Section

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28AA and order to appropriate the Duty and interest paid by M/s.
Suzuki Motor Gujarat Pvt. Ltd as discussed in foregoing paras.

- c. I hold that the imported goods of declared Assessable value of Rs. 30,80,587/- (Rupees Thirty Lakh Eighty Thousand Five Hundred Eighty-Seven Only) are not liable for confiscation under Section 111 of the Customs Act, 1962 as discussed in foregoing paras.
- d. I refrain from imposing any penalty on M/s. Suzuki Motor Gujarat Pvt. Ltd. under Section 112/114A of the Customs Act, 1962 as discussed in foregoing paras.

18. The Show Cause Notice No. VIII/10-208/ICD-SND/O&A/HQ/2024-25 dated 15.10.2024 is disposed of in terms of the para above.

(SHREE RAM VISHNOI)
ADDITIONAL COMMISSIONER
CUSTOMS AHMEDABAD

DIN: 20250371MN00000B71E

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Date: **05.03.2025**

BY SPEED POST / E-MAIL / HAND DELIVERY / THROUGH NOTICE BOARD

To

M/S SUZUKI MOTOR GUJARAT PVT. LTD.
BLOCK NO. 334/335, PLOT NO. 334 AND 335,
SURVEY NO. 293, VILLAGE HANSALPUR,
NR. BECHARAJI, TALUKA- MANDAL,
AHMEDABAD, GUJARAT-382130

Copy to:

1. The Additional Commissioner of Customs (Audit), New Customs House, Ballard Estate, Mumbai.
2. The Deputy Commissioner of Customs, ICD-Sanand, Ahmedabad.
3. The Superintendent of Customs (Systems), Customs HQ, Ahmedabad for uploading on official web-site.
4. Guard File.