सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद
OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,
चौथी मंज़िल 4th Floor, हडको भवन HUDCO Bhawan, ईश्वर भुवन रोड़ Ishwar Bhuvan Road
नवरंगपुरा Navrangpura, अहमदाबाद Ahmedabad – 380 009
दूरभाष क्रमांक Tel. No. 079-26589281

DIN – 20250671MN000000D437

क	फ़ाइल संख्या FILE NO.	CAAPL/COM/CUSP/1052/2023-Appeal (S/49-214/CUS/AHD/23-24)
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	AHD-CUSTM-000-APP-085-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.06.2025
ङ	उदभूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Assessment Order No. KOL/CUS/ACC/AC07/2023-24, dated 19.04.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.06.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Sal Tech Corporation 409, Lilamani Corporate Heights, Rama Pir No Tekro, Nr. BRTS Bus Stop, Ahmedabad – 380013

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 है.
	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)	बैगेज़ के रूप में आयातित कोई माल.
(a)	any goods exported
(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 दस्तावेज़ों 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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस,दण्ड,जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/-(रूपए दो सौ मात्र)या रु.1000/- (रूपए एक हज़ार मात्र), जैसा भी मामला हो, से सम्ब न्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रूपए 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 सम्बंन्ध 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 :	
	सीमाशुल्क, केंद्रीय 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	2nd 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 हज़ार रुपए.**	
(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 हज़ार रुपए**	
(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 हज़ार रुपए.**	
(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

Appeal has been filed by M/s. Sal Tech Corporation, 409, Lilamani Corporate Heights, Rama Pir No Tekro, Nr. BRTS Bus Stop, and Ahmedabad – 380013, (hereinafter referred to as 'the Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Assessment Order No. KOL/CUS/ACC/AC/07/2023-24, dated 19.04.2023 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner of Customs, Faceless Assessing Group V (I), Air Cargo Complex, NSCBI Airport, Kolkata (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the Appellant had imported vide EDI Bill of Entry No. 5136559, dated 20.03.2023 the goods primarily declared and described as mentioned in Table-A of the impugned order. The aforesaid goods were supplied by M/s Compressor Controls LLC, 4745 121" Street, Des Moines, IOWA-50323-2316 USA against Invoice No.SO2133-003064 dated 13.03.2023 for a declared value of USD 197471.19 [FOB]. The said Bill of Entry was self-assessed by the Appellant under the provision of Section 17(1) of the Customs Act 1962.

2.1 During verification of the self-assessment of the subject Bill of Entry under provisions of Section 17 (2) of the Customs Act, 1962, it transpired that the Appellant had classified the item Nos. 1, 2, 3, 4, 6 and 7 of the above Bill of under the Tariff Entry 90268090 and thus under the heading 9026. The heading 9026 is essentially reserved for Instruments and apparatus for measuring or checking the flow, level, pressure or other variables of liquids or gases but excludes instruments and apparatus of headings 9014, 9015, 9028 or 9032,. On classifying the goods under the aforesaid heading 9026 the Appellant had availed duty benefit under Serial No. 31 of the Notification No. 24/2005-Cus dated 01.03.2005. The aforesaid Serial No. extended the exemption of 'nil Basic Customs Duty or BCD for goods classifiable under the heading 9026.

2.2 However, during verification of the self-assessment of the above Bill of Entry it transpired that the items mentioned in above were controlling and regulating devices and thus were correctly classifiable under the heading 9032. Therefore, the Virtual Assessing Officer (VAO), had raised the following query dated 20.03.2023 through the ICES

"PLEASE UPLOAD CATALOGUES/TECHNICAL WRITE UP OF EACH ITEM DECLARED AS CONTROLLER AND REDUNDANT CONTROL SELECTER."

2.3 In response, the Appellant submitted their reply dated 21.03.2023 and ongoing through the same the following had transpired to the Virtual Assessing Group:

"IMPORTER, FROM THE WRITE UP UPLOADED IT TRANSPIRES THAT THE EQUIPMENTS DECLARED AS ANTISURGE CONTROLLERS AND REDUNDANT CONTROL SELECTORS ESSENTIALLY CONTROL THE AIR

FLOW IN AXIAL AND CENTRIFUGAL COMPRESSORS FOR THE PURPOSE OF PREVENTING SURGES-THUS THE NAME ANTI-SURGE CONTROLLER. THUS, THEY ARE NOT MEASURING OR ANALYTICAL EQUIPMENTS (41) 5. -3- CLASSIFIABLE UNDER HEADING 9027 BUT ARE CONTROLLING /REGULATING EQUIPMENTS CLASSIFIABLE U/H 9032. THEREFORE, PLEASE STATE WHETHER YOU AGREE TO THE RECLASSIFICATION OF THE GOODS UNDER HSN 9032 OR ELSE SUBMIT YOUR COUNTER ARGUMENTS."

2.4 Further clarifications had been sought from the Appellant and in response, the Appellant had uploaded reply on 21.03.2023 vide IRN NO: - 2023032100095198. The Appellant's aforesaid reply was in the form of technical write-up which essentially stated that –

"the imported item being only a Part used for measuring various values and feeds the same to the Instrument Panel, which eventually ensure the entire System works seamlessly. The imported part in itself is not the Controller System and hence does not qualify to be classified under 9032 -Automated Controllers as being requested by your good offices" and "equipment declared as anti-surge controllers and redundant control selectors essentially control the air flow in axial and centrifugal compressors for the purpose of preventing surges-thus the name anti-surge controller". "

2.5 The Appellant had further submitted that

"Please note the imported item's main function being-

1. *Measuring the Distance between 2 points i.e. Operating Point and the Maximum permissible Limit (Surge Limit Line).*
2. *Maintain-by measuring" other Variables are within the Range of Values permitted"*
3. *Turbo-machinery Control Application-System of various parts, compressors measuring tools, connected, and controlled from an Instrument Panel."*

Therefore, the Appellant through the above discussed replies had essentially maintained that the items under dispute were meant for measurement and were correctly classifiable under the tariff entry 90268090.

2.6 The adjudicating authority vide the impugned order has passed the order as detailed below:-

a. He found that the Item Nos. 1, 2, 3, 4, 6 and 7 of the Bill of Entry No 5136559, dated 20.03.2023 being essentially automatic controlling or regulating devices are appropriately classifiable under the heading 9032 and under the Tariff

Entry No. 90328990. Further, having been incorrectly classified under the heading 9026 the aforesaid items shall also not benefit from the BCD exemption under Serial No. 31 of the Notification no. 24/2005-Cus, dated 01.03.2005 as it is only available to items correctly classifiable under the heading 9026.

3. Being aggrieved with the impugned order, the Appellant has filed the present appeal wherein they have submitted grounds which are as under:-

3.1 It is submitted that the observations of the assessing authority in the Paras of the impugned order are analyzed to contend into the matter, as under:

- As regards observation in Para 10 (a) to 10 (f), it is submitted that all these sub-para contain Technical narration, the source or the authority is not mentioned. Further observation in Para 10 (f), in fact, supports the contention of the Appellant that it is the computerized system which actually has the hold of doing controlling function in the present days' scenario of Compressor system. It is observed by the assessing authority as under:

  These computerized systems through software specially designed for this purpose can receive and analyzed inputs from these sensors and electrical components and in this way it is possible not only monitor the variables in a compressor system but can also issue suitable commands to control these variables in case the compressor shows signs of performing below or above optimally set thresholds.

- As regards OBSERVATION in Para 10 (I), the assessing authority has made it clear that the algorithms in the controller use the data to establish the performance of the machine; the data identifies the operating point in as it approaches the vicinity of surging. When the compressor's operation approaches the surge point the controller modulates either a flow control valve in the recycle line or adjusts the speed of the compressor driver.

  In this respect, it is submitted that this means that the algorithms in the Controller reads the data to ascertain the current value, whether being under the threshold limit or with the defined range, as pre-set. This data is then fed into the Computer system which issued the command to the controller to do certain act to keep the values in such pre-set. There is nothing in the Anti-surge controller (and in Performance Controller & Redundancy Control Selector too) which triggers any sort of action in the nature of automatic controlling and regulating.

- As regards observation in Para 10 (I), it is submitted that it is true that the anti-surge controller is an instrument that accurately determines how close the compressor is to surging. This clearly shows that Anti-surge Controller

determines or checks how far the compressor is from its surging point.

However, it also submitted that it is absolutely wrong to state that it maintain an adequate but not excessive flow rate. Anti-surge Controller is a device basically meant for measuring the values in the compressor. But without the connectivity to or attachment with the Hardware (i.e. Computer system) and the software (here, Trainview® HMI), Anti-surge controller is useless as the same does not have any independent capability to control the values in the Compressor. If it is detached from the Computer system with the built-in software, it will only measure the values to be controlled. In fact, the real controlling capability remains with the master i.e. Computer system. Thus, the computer system is the real controller. The Anti-surge controller (and Performance Controller & Redundancy Control Selector too) are the measuring devices connected to the Computer system. They can independently do the function of measuring without the being connected to the Computer system, but cannot do controlling automatically, on their own. They are the slaves to the Master i.e. Computer system. In fact, their connection with the Computer system creates a combination of measuring devices and controlling device, the latter being the Computer system.

- As regards observation in Para 10 (m), it is submitted that the assessing authority has done nothing more than simply describing as to what is Performance Controller and then stating that it is often used in conjunction with the Anti-surge Controller.

As regards observation in Para 10 (n), it is observed by the assessing authority that a Redundancy Controller or (as in the present case) the Redundant Control Selector is a programmed instrument that helps to switch between the main computer and the backup computer and vice versa when either starts performing below a set threshold.

It is submitted that how far this observation can be considered as establishing that the same is an instrument which does automatic controlling and regulating?

- As regards observation in Para 10 (o), it is observed by the assessing authority that Anti-surge Controllers, Performance Controllers and Redundancy Controllers play a controlling and regulating role in the functioning of compressors/compressor systems.

In this context, it is submitted that in view of the submission in the foregoing Paras, it is wrongful to state that Anti-surge Controllers, Performance Controllers and Redundancy Controllers play a controlling and regulating role in the functioning of compressors/compressor systems.

- As regards observation in Para 11 d, the assessing authority observed that by admissions of the importer in their reply dated 21.03.2023 duly uploaded state that the Anti-surge Controller and the Performance Controller essentially control air flow in axial and centrifugal compressors for the purpose of preventing surge"

  In this regard, it is submitted that there is nothing like such admission in the Appellant's reply dated 21.03.2023.

- As regards observation in Para 11 f by the assessing authority, it is submitted that it strengthens the stand of the Appellant that the computerized system with a designed software can issue commands for controlling.

  The assessing authority's observation was as follows: "compressor control in the modern industry is done through a system of electrical sensors and transmitters that can send up input signals to a computerized system working on a software designed for this purpose and based on these input signals the computerized system can issue commands to relays/circuit breakers, valves, actuators and other mechanical and electrical devices in the compressor system for the purpose of controlling or regulating the variables inside a compressor as intake gas flow, speed of the impeller or rotor for changing the velocity of the gas etc."

- As regards observation in Para 11 g by the assessing authority, it is submitted that the contention of the Appellant is confirmed. As Anti-surge Controller, Performance Controller and Redundancy Control Selector work in sync with the aforesaid Trainview software to exercise efficient control over a compressor/compressor system, it can doubtlessly concluded that they are not automatic controlling and regulating instruments, on their own.

- As regards observation in Para 11 h by the assessing authority, it is contended that in view of the submission in the foregoing Paras, in general, and in the preceding Para, in particular, the instruments are not automatic controlling and regulating instruments, so not covered within the embrace of the definitions under (A) and (B) to Chapter note 7 to Chapter 90.

- As regards observation in Para 11 i by the assessing authority, it is submitted that the assessing authority, while attempting to strengthen the case of the department, inadvertently supporting the case of the Appellant. The observation of the assessing authority was as under:

  > "and through a system of sensors and transducers the nonelectrical quantity of gas pressure or velocity is converted in to electronic signals which then is transmitted to the computerized control system where the software already discussed above converts them into readable data".

- As regards further observation in Para 11 i, the assessing officer concluded as under.

  ....."It is clear from the discussions so far that being part of a computerized control system all the three instruments in question are able to control the variables to the compressor/compressor system automatically".

In this regard, it is submitted that the assessing authority here made a different statement that all the three instruments in question are part of a computerized control system. Thus, it is accepted by the assessing authority that CONTROL is with computerized control system too indirectly supported the contention of the appellant. This also does mean that all the three instruments in question are not automatic controlling and regulating instruments.

- As regards observation in Para 11 I, it is submitted that there is nothing in the Explanatory notes to the heading 9032, as has been observed.

- Technical submission, in the above Paras under Sr. No. 2 of Grounds of Appeal (i.e. TECHNICAL ASPECT) is summed up and summarized in simple language, as under:

  These three instruments, under reference, read/measure some physical values in the Compressor, which require to be controlled and send the same in some sort of signals understandable by the Computer system with the help of the software in-built. The Computer system then issues commands to take certain action which get carried out through these instruments. To make it more understandable, suppose, these instruments read/measure physical values but there is not Computer system to which they are or can be attached. So. a question is raised in such a scenario - are these instruments capable to carry out controlling or regulating these value automatically, on their own? The answer is loud and clear NO. THEY CAN NOT. Then, the case crystal-clear. They are not Automatic controlling or regulating instruments/devices; and hence do not merit to be classified under CTH 9032.

- As per GATT in "Chapter 4 Tariffs", it is, inter-alia, agreed upon by the member countries as under:

  (1) Background: Tariffs

  (d)Tariff Classifications

Like tariff rates, tariff classifications are one of the basic components of the tariff system. National tariffs are organized in the form of tables that consist of "tariff classification numbers" assigned to goods, and a corresponding tariff rate. The way in which an item is classified for tariff purposes will have an important and

palpable effect on the duties charged. When classifications are applied in an arbitrary fashion, they can in effect nullify rate reductions. The GATT contains no rules regarding tariff classifications. In the past, countries had their own individual systems. However, as trade expanded countries recognized the need for more uniform classifications, which resulted in the drafting in 1988 of the "Harmonized Commodity Description and Coding System" or "HS" system. Today, most countries use a harmonized system of six-digit tariff numbers.

(2) Legal Framework

b) Disciplines on Tariff Classifications

Article 3.1 of the International Convention on the Harmonized Commodity Description and Coding System (HS Convention) stipulates that the signatories "shall not modify the scope of the sections, chapters, headings, or subheadings of the Harmonized System." This is done in order to maintain uniform administration of the HS. The HS classifications are reviewed on a regular basis so as to keep pace with technological development. If, as a result of these reviews, the classification of a good changes in such a way as to raise its bound rate, countries must enter into negotiations under the terms of GATT Article XXVIII.

Sourcehttp://www.meti.go.jp/english/report/data/gCT9904e.html?&r=1

- In view of the above, the Appellant submit that it is established that when the goods are cleared under a particular six-digit tariff number from a foreign member country, it has, though not legal, binding effect on the member countries to respect this uniform classifications.
- It is submitted that the following Bills of Entry have been earlier cleared in respect of the impugned goods under CTH 9026, without any query objection raised by the department.

BILL OF ENTRY NO/DATE	IMPORTER	ITEM SR.NO.	ITEM DESCRIPTION	ITEM CTH
4145012/12.01.2023	OIL AND NATURAL GAS CORPORATION LIMITED	5 & 12	PERFORMANCE CONTROLLER	90268090
		6,10 & 11	ANTI SURGE CONTROLLER,	
4343377/25.01.2023	SAL TECH CORPORATION	2 & 6	PERFORMANCE CONTROLLER	90268090
		1 & 5	ANTI SURGE CONTROLLER,	
		3	REDUNDANT CONTROL SELECTOR	
5136558/20.03.2023	SAL TECH CORPORATION	1 & 4	ANTI SURGE CONTROLLER,	90268090
		2 & 5	REDUNDANT CONTROL SELECTOR	
3871354/23.12.2022	SAL TECH CORPORATION	1	ANTI SURGE CONTROLLER,	90268090

- It is pertinent to note that earlier three consignments have been cleared under the same CTH i.e. 9026, without any query, objection being raised by the department. It is also, therefore, relevant that the department is debarred from taking a contrary stand in absence of adequate independent evidence in support of classification, as claimed by the department. Factual and legal position has not changed which was prevailing at the time of earlier imports and is prevailing at the time of current import. It was held by the Supreme Court's decision in the case of Jayaswal Neco Ltd. that it was not permissible to revenue authorities merely picking and choosing the classification only for the purpose of imposing higher rates of duty. Also, as reported in 2007 (210) E.L.T. 104 (Tri. - Del.), it was held by the Appellate Tribunal that on factual or legal aspect of the case for classification of 'Jelly Belly' nothing was unknown to the Revenue Authorities, there were no new facts or change in the legal provisions and the Revenue Authorities merely picking and choosing the classification that offers the higher of the rates of duty, which was not permissible in the light of Supreme Court judgment in the case of Jayaswals Neco Ltd. [2006 (195) E.L.T. 142 (S.C.)]. This decision is affirmed by the Supreme Court as reported in [Commissioner v. S.K. Industries - 2012 (277) E.L.T. A56 (S.C.)]
- Without the prejudice to the submission in foregoing Grounds of Appeal, it is submitted that during the course of reassessment based on the impugned order, the Virtual Assessing Officer had taken into consideration the Tariff rate of duty of 15% for the impugned goods without applying the exemption admissible for Sr. No. 494A, inserted in Notification No. 50/2017-Customs dated 30.06.2017, vide Notification No. 21/2021-Customs, dated 31.03.2021. As per the said Sr. No. 494A, the duty effective rate of duty is 7.5%. On the Appellant, this mistake has cast an unnecessary and unwarranted financial burden of paying Basic Customs duty and other consequential duty of lakhs of Rupees. It is urged to return this duty to the appellant, as the same is the illegal and non-statutory levy.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 13.05.2025 following the principles of natural justice. Shri K. J. Kinariwala, Consultant, appeared for the hearing and he re-iterated the submission made at the time of filing the appeal.

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the adjudicating authority and the defense put forth by the Appellant in their appeal memorandum. The Appellant has filed the present appeal on 05.07.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Assessment Order dated 19.04.2023 as 24.04.2023. Therefore, the appeals were required to be filed by

23.06.2026 i.e. within stipulated period of 60 days under Section 128 (1) of the Customs Act, 1962. Since the appeals have been filed on 05.07.2023, there is a delay of 11 days beyond the stipulated period of 60 days. The Appellants have also filed applications for condonation of delay.

5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

i. That condonation of delay application so filed by the Appellant is to be allowed or otherwise i.e. whether the appeal is time barred or not;
ii. Whether the imported items are primarily "measuring or checking instruments" (CTH 9026) or "automatic regulating or controlling instruments" (CTH 9032).

5.2 Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of eleven days beyond the initial sixty-day period, but within the extended thirty-day period. The Appellant has attributed the delay to the impugned order being received by an office staff unaware of its importance, and the subsequent need for the consultant to prepare the appeal. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the relatively short delay of eleven days and the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, in light of the above provisions of law and considering the submissions of the Appellant and also considering the fact that the appeal have been filed within a further period of 30 days, I allow the condonation of delay in filing the appeal, taking a lenient view in the interest of justice.

5.3 Further, the total duty as re-assessed by the Assessing Officer has been paid by the Appellant, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E of the Customs Act, 1962.

5.4 The core of the classification dispute lies in whether the imported items are primarily "measuring or checking instruments" (CTH 9026) or "automatic regulating or controlling instruments" (CTH 9032). Chapter Note 7 to Chapter 90 of the Customs Tariff Act, 1975, is crucial here. It states that Heading 9032 applies only to:

> *"(a) instruments and apparatus for automatically controlling the flow, level, pressure or other variables of liquids or gases, or for automatically controlling temperature; and*

(b) instruments and apparatus for automatically controlling other variables (e.g., speed, position, quantity, weight), whose operation depends on an electrical phenomenon changing in relation to the factor to be controlled."

5.5 The impugned order highlights, based on the Appellant's own submissions and descriptions, that the "Anti-surge Controllers" and "Redundant control selectors" "essentially control the air flow in axial and centrifugal compressors for the purpose of preventing surges." This strongly suggests a primary function of controlling or regulating rather than just measuring. Even if they involve measurement, that measurement is inherently part of a feedback loop designed for automatic control. The Appellant's contention that these items are merely "parts" or do not "independently control or trigger actions" is not fully convincing. The Explanatory Notes to CTH 9032 clarify that instruments may comprise different components, working together to achieve automatic control. The key is the overall function in the system. The phrase "Anti-surge Controller" itself denotes a controlling function. While common parlance is not determinative, it often reflects the primary purpose of an item.

5.6 Relevant jurisprudence supports that if an instrument's primary function is to automatically control a variable, it falls under CTH 9032, even if it incorporates measuring elements.

5.7 While the impugned order may not explicitly cite external technical sources for every observation, its findings are based on the Appellant's own submitted documents and the functional description derived from them. The burden is on the Appellant to demonstrate how their technical understanding differs from the functional interpretation used for classification. The distinction between a "part" and a "controller" is often blurred, but for HSN purposes, the decisive factor is whether the "part" itself performs the essential controlling function or merely contributes to it. From the description, these "controllers" seem to be crucial in initiating or adjusting actions to prevent surges, which is a regulatory function. While "common parlance" can sometimes be indicative, it cannot override a clear functional interpretation aligned with HSN Notes and Chapter Notes. Here, the very name "Controller" suggests control, and the technical write-ups, even as interpreted by the Appellant, point towards a controlling function (e.g., "maintaining the flow rate").

5.8 The Appellant misinterprets the requirement of the three components in Explanatory Note to 9032. The note describes the elements common to automatic controlling instruments. It does not mandate that each imported article must comprise all three components as a single, physically integrated unit, especially when they function as a complete system together with software, as explained by the adjudicating authority. The notes refer to the overall system or apparatus having these features. The Appellant's items are stated to "work in sync with the aforesaid Trainview software to exercise efficient

control over a compressor / compressor system," indicating their role in a larger controlling mechanism.

5.9 The argument of prior clearances and "promissory estoppel" is generally not applicable in matters of classification or duty liability. Each import is a fresh assessment. Errors in past assessments, if any, do not bind the department. The Supreme Court in Union of India vs. M/s. V.V.F Limited reported at 2020 (372) E.L.T. 495 (S.C.) has held that "The doctrine of promissory estoppel cannot be invoked against exercise of powers under the statute". Thus, if the goods were incorrectly classified earlier, the department is not precluded from correcting the classification in a subsequent assessment. The cases cited by the Appellant generally pertain to changing interpretations without a change in facts or law, which is different from correcting a misclassification based on a clear functional analysis.

5.10 The Appellant merely asserted the applicability of 7.5% BCD under Sr. No. 494A of Notification No. 50/2017-Customs dated 30.06.2017 (as amended by Notification No. 21/2021-Customs dated 31.03.2021). However, the burden of proving eligibility for an exemption notification lies squarely on the assessee. The Appellant has not provided sufficient evidence or detailed arguments to demonstrate how the re-classified goods specifically fall under the precise description of items eligible for the concessional rate under Sr. No. 494A of Notification No. 50/2017-Cus. Without such specific correlation and proof, the benefit of an exemption cannot be granted. The entry at Sr. No. 494A specifically refers to "Parts of goods of heading 9026" or "automatic regulating or controlling instruments... for measuring, checking, analyzing or automatically controlling or regulating" of certain specified types not directly applicable to the general description of the imported "Controllers" in the context of the claimed benefit. Given the general nature of the Appellant's claim for this notification, without specific elaboration on how the imported items precisely fit the conditions or description under that entry, the benefit cannot be extended.

6. Based on the functional analysis of the imported goods, their role as automatic controlling or regulating devices, and the appropriate application of the Customs Tariff Act, 1975, read with HSN Explanatory Notes, the classification under CTH 90328990 is found to be correct and well-justified. Furthermore, the Appellant has failed to provide sufficient grounds or evidence to establish their eligibility for any other exemption notification, including Sr. No. 494A of Notification No. 50/2017-Customs, for the re-classified goods. Consequently, the demand for differential duty and the findings in the impugned order are upheld.

7. In view of the above, I find that the adjudicating authority's classification of "ANTISURGE CONTROLLER" and "REDUNDANT CONTROL SELECTOR" under Customs Tariff Heading 90328990 is correct. The Appellant's arguments against this

classification are found to be without merit. Furthermore, the Appellant has failed to establish their eligibility for any other exemption notification. Therefore, I agree with the observations and findings of the adjudicating authority and do not find any justification to interfere with the findings in the impugned order passed by the adjudicating authority.

8. In view of the above discussions, the findings and observations of adjudicating authority are required to be upheld.

9. Accordingly, the appeal filed by the Appellant is rejected.

(Amit Gupta)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. CAAPL/COM/CUSP/1052/2023-APPEAL
(S/49-214/CUS/AHD/23-24)

Date: 19.06.2025

1600

By Registered post A.D/E-Mail

To,
M/s. Sal Tech Corporation
409, Lilamani Corporate Heights,
Rama Pir No Tekro,
Nr. BRTS Bus Stop,
Ahmedabad – 380013.

सत्यापित/ATTESTED
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील्स), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Ahmedabad.
3. The Assistant Commissioner of Customs, Faceless Assessing Group V(I), Air Cargo Complex, NSCBI Airport, Kolkata – 700 052.
4. The Assistant/Deputy Commissioner, Customs, Air Cargo Complex, Ahmedabad
5. Guard File.