



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 – 20250571MN0000333D38

क	फ़ाइल संख्या FILE NO.	CAPPL/COM/CUSP/1318/2023-APPEAL (S/49-251/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-050-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	30.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order – In – Original No. 68/ADC/VM/O&A/2023-24, dated 08.06.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	30.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Satkul Enterprises Ltd, Plot No. 124, Sub Plot No. 03, B/s. Rajni Estate, Rakhial, Ahmedabad – 380 023

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 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के 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 :	
	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	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 रुपए या उससे कम हो तो एक हजार 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 रुपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पाँच हजार 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 रुपए से अधिक हो तो; दस हजार 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

M/s Satkul Enterprises Ltd, Plot No. 124, Sub Plot No. 03, B/s. Rajni Estate, Rakhial, Ahmedabad – 380 023 [hereinafter referred to as 'the Appellant'] has filed this Appeal against O-I-O No 68/ADC/VM/O&A/2023-24, dated 03.06.2023 (hereinafter referred as 'the impugned order') passed by the Additional Commissioner, Customs, Ahmedabad (hereinafter referred as 'the adjudicating authority').

2. Facts of case, in brief are that Appellant had filed 11 Bill of Entry mentioned in Table-A for clearance of goods i.e. "Cobalt Base Bare Cast Rods" for Home consumption at the ICD Khodiyar.

Table-A

Sr No.	Bill of Entry Nos	Bill of Entry date	Total Qty [Kgs]	Total Assessable Value Rs.	Total Duty paid @ 2.5 % BCD Rs.	alleged Total Duty demanded @ 10 % BCD [BCD+SW5+IGST]	Differential duty ordered to be recovered Rs.
1	2	3	4	5	6	7	8
1	2501177	25-01-2021					
2	3441956	05-04-2021					
3	3875474	08-05-2021					
4	4320824	15-06-2021					
5	4484321	28-06-2021					
6	5293553	03-09-2021	15,600	48,42,672	1,02,88,260	1,50,02,601	47,14,341
7	5867989	16-10-2021					
8	6411626	26-11-2021					
9	7381329	05.02.2022					
10	7967015	22.03.2022					
11	8195089	08.04.2022					
	Total		15,600	48,42,672	1,02,88,260	1,50,02,601	47,14,341

2.1 Appellant has declared classification of Goods under CTH 81052010 of the First Schedule of Customs Tariff Act, 1975 attracting Basic Customs Duty @ 2.5 %. The Appellant had availed benefit of the exemption under Notification No. 50/2017-Cus (Sr. No. 309A) and paid duty @ 2.5 % Adv. The Bills of Entry in question were assessed by Faceless Assessment Group and cleared by Officers. The imported product later on appeared to be a finished product not classifiable under CTH 81052010 and also appeared to be Article of Cobalt attracting duty @ 10 % BCD. The proper Customs officers have not accepted declared classification and issued SCN dated 06.01.2023 proposing to change classification of goods from declared CTH 81052010 to proposed CTH 81059000 with proposals to recover differential duty Rs. 47,14,341/- with interest, redemption fine and penalties as mentioned in SCN dated 06.01.2023. The Appellant has objected proposals in SCN dated 06.01.2023, filed interim reply asking for copies of documents/information and the cross examination. However, adjudicating authority has passed impugned order ex-parte, changed classification of goods from declared CTH 81052010 to CTH 81059000. The impugned order has confirmed differential Customs Duty of Rs. 47,14,341/- with interest and imposed Redemption Fine of Rs. 4,50,000/- under Section 125 (1) of the Customs Act, 1962 and Penalty of Rs. 4,50,000/- under

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Section 112 (a) (ii) and Penalty of Rs. 4,00,000/- under Section 114AA of the Customs Act 1962.

3. Being aggrieved with the impugned Order changing classification and against Order of recovery of differential duty of Rs. 47,14,341/- with interest, Redemption Fine and Penalties, the Appellant has preferred this appeal on various ground as mentioned in the grounds of Appeal.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 23.04.2025. Shri P. P. Jadeja, Consultant and Shri Kulbir Singh Bagga, Director of Appellant firm appeared for the personal hearing. They reiterated submissions made in Appeal, filed synopsis and argued during the personal hearing. They also stated that impugned order is passed on assumptions and presumption. It is not sustainable in law in absence of the evidence for change of classification. Revenue has not discharged the burden cast on it for changing the classification. Classification is changed to CTH 81059000, as it attracted higher duty @ 10% Adv. The differential duty of Rs. 47,14,341/- confirmed with interest, Redemption Fine and Penalties imposed are not justified/sustainable in this case. They requested to set aside differential duty demands, interest, R/F and penalties as well as to allow their appeal with consequential reliefs, in the interest of justice.

DISCUSSION & FINDINGS:

5. I have carefully gone through the Appeal Memorandum as well as records of the case and submissions made on behalf of Appellant during hearing. The issues to be decided in this Appeal are whether the impugned Order passed by adjudicating authority is legal and proper or otherwise for changing classification and for differential duty demand with interest, R/F and penalties.

5.1 Being aggrieved, the Appellant has filed the present appeal on 09.08.2023. In the Form C.A.-1, the date of communication of the Order-In-Original dated 08.06.2023 has been shown as 15.06.2023. 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 paid Rs. 13,18,706/- under protest, towards the confirmed Customs Duty of Rs. 47,14,341/-, thereby fulfilling the requirement of pre-deposit of filing the appeal as envisaged under the Section 129 E 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.

The Bills of Entry wise clarification by Appellant on 11 disputed Bill of Entry is in Table-B as under.

Table-B

Sr No.	Bill of Entry No	Bill of Entry date	Clarification/comments on clearance
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1	2501177	25-01-2021	Department had carried out necessary inquiry, examination of goods was done, samples were drawn on 06-02-2021 vide Test Memo No. 1567 dated 06-02-2021. Test Reports were received. Then, goods were released on duty @ 2.5 % as claimed by the Appellant in the self assessment process.
2	3441956	05-04-2021	Bill of Entry at Sr. Nos 2 to 4 were cleared on the basis of documents/reports for the Bill of Entry No. 2501177 dated 25-01-2021 without any further objection by proper officers.
3	3875474	08-05-2021	
4	4320824	15-06-2021	
5	4484321	28-06-2021	FAG raised query dt. 29/06/2021 that "(2) why the B/E may not be assessed by changing the CTH from 81052010 to 81059000". Accordingly the appellant had submitted their reply and FAG in their reply/query no. 4 dt: 01/07/2021 had written "regarding classification based on importer explanation there is no objection" and query was also raised for the valuation of Goods, but on clarifications of Appellant, assessment of goods was finalised under CTH 81052010. Self-Assessment was accepted and goods were cleared on customs duty @ 2.50% ADV.
6	5293553	03-09-2021	Bill of Entry at Sr. Nos 6 to 7 were cleared based on the documents/reports for previous Bill of Entry without any further objection by proper officers.
7	5867989	16-10-2021	
8	6411626	26-11-2021	Query was again raised for CTH 81052010, which was replied by Appellant vide letter No. SEL/2122/CUSTOMS/QUERY/006 dated 03-12-2021. Considering reply, assessment finalised under CTH 81052010 and goods were cleared @ 2.5 % BCD.
9	7381329	05.02.2022	Two orders on same Bill of Entry can not be sustained in law. CA-1 Appeal S/49-69/CUS/AHD/2022-23 against speaking Order NO. 18/DC/ICD/IMP/SATKUL/2022 dt. 25-03-2022 passed by Deputy Commissioner of Customs, ICD-Khodiyar is unconfirmed views of individual officer under challenge in judicial process, wherein it is not sustained vide O-I-A No. AHD-CUSTOM-000-APP-388-2023-24 dated 19-01-2024 issued by Commissioner (Appeals), Ahmedabad with directions to AC, ICD for fresh examination of submissions of Appellant and issue fresh order following principles of natural justice and legal provisions considering all relevant facts and submissions made by Appellant, which is pending decision as of today.
10	7967015	22.03.2022	Two orders on same Bill of Entry can not be sustained in law. Re-Assessed differential duty was paid "Under Protest" and Appeals against these 2 Bill of Entry were filed, wherein vide O-I-A No. AHD-CUSTOM-000-APP-633 to 634-2022-23 dated 31.03.2023 issued by Commissioner (Appeals), Ahmedabad such Re-assessment is not sustained with directions to AC, ICD for fresh examination of submissions of Appellant and issue fresh order following principles of natural justice and legal provisions considering all relevant facts and submissions made by Appellant, which is decide in remand Order NO. 21/DC/ICD/IMP/SATKUL/2023 dated 31-10-2023 passed by Deputy Commissioner of Customs, ICD-Khodiya. CA-1 Appeal S/49-400/CUS/AHD/2022-23 against OIO dated 31-10-2023 is pending decision in CA-1 Appeal.
11	8195089	08.04.2022	

6. It is observed that the Appellant imported goods described as "Cobalt Base Bare Cast Rods" of various sizes (GLC06 and GLC021 – 3.2 MM x 1000 MM / 4.0 MM x 1000 MM), as detailed in the documents submitted. The Appellant classified the goods under CTH 81052010. These goods are "freely importable" into India, and there is no dispute regarding the description, quality, quantity, or value of the imported goods in question. The sole issue in dispute pertains to the classification of the goods—whether they fall under CTH 81052010 as claimed by the Appellant, or under CTH 81059000 as held in the impugned order. It is important to note that there is no disagreement regarding the four-digit classification of the goods under Chapter Heading 8105. For reference, the relevant entry under Chapter 8105 is reproduced below:

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CTH	Description of goods	unit	BCD
8105	COBALT MATTES AND OTHER INTERMEDIATE PRODUCTS OF COBALT METALLURGY; COBALT AND ARTICLES THEREOF, INCLUDING WASTE AND SCRAP		
810520	- Cobalt mattes and other intermediate products of cobalt metallurgy; unwrought cobalt; powders :	Kg	5 %
8105 20 10	--- Cobalt mattes and other intermediate products of cobalt metallurgy	Kg	2.5% **
8105 20 20	--- Cobalt unwrought	Kg	5 %
8105 20 30	--- Powders	Kg	5 %
8105 30 00	- Waste and scrap	Kg	5 %
8105 90 00	- Other	Kg	10 %

** Effective rates of Basic Customs duty revised @ 2.5% vide entry No. 390A inserted in Notification No. 50/2017-Cus vide Notification No. 25/2019-Cus., dated 06-07-2019.

6.1 It is evident from the case records that the Appellant entered into a Sales Contract with an overseas supplier for the import of "Cobalt Base Bare Cast Rods" of various sizes, under agreed terms and conditions, treating the goods as intermediate products. The agreement between the Appellant and the supplier is reflected in the proforma invoices submitted along with the Bills of Entry, which were filed on a self-assessment basis with payment of applicable Basic Customs Duty (BCD) at the rate of 2.5% on the declared transaction value. The goods were cleared during the period from 25.01.2021 to 08.04.2022. Subsequently, a Show Cause Notice (SCN) bearing No. F. No. VIII/10-40/ICD-Khod/O&A/HQ/2022-23 dated 06.01.2023 was issued, proposing recovery of differential Customs Duty amounting to ₹47,14,341/- under Section 28 (1) of the Customs Act, 1962, along with interest under Section 28AA of the Act. The SCN also proposed imposition of Redemption Fine and Penalties. The Appellant has paid an amount of ₹13,18,706/- towards the differential customs duty, under protest.

6.2 The Adjudicating Authority has passed the impugned Order-in-Original No. 68/ADC/VM/O&A/2023-24, dated 08.06.2023, wherein the following orders have been issued:-

- Rejected the declared classification of Bare Cast Rod of Cobalt imported by the said importer under 06 Bills of Entry as detailed in Table B of para 6 to the said SCN under Customs Tariff Heading No. 8105 2010 of the First Schedule of the Customs Tariff Act, 1975;
- Classified imported goods, i.e. "Cobalt Base Bare Cast Rod" under Customs Tariff Heading No. 8105 9000 of First Schedule of Customs Tariff Act, 1975;
- Ordered that the imported goods, i.e. "Cobalt Base Bare Cast Rod" covered under 06 Bills of Entry as per Table B of para 6 to the said SCN above imported by the said importer M/s. Satkul Enterprises Ltd., should be assessed to duty @ 30.980 % (B.C.D.@ 10% + S.W.S. @ 1% + I.G.S.T. @ 18%) under C.T.H. 81059000 and accordingly, confirmed the demand and ordered to recover the total amount of differential Custom duties amounting to **Rs. 47,14,341/-** (Rupees Forty Seven Lakh Fourteen Thousand Three



Hundred and Forty One only) under Section 28 (1) of Custom Act, 1962 by denying the benefit of Sr. No. 390A of Notification No. 50/2017-Cus. Dated 30.06.2017. He appropriated differential Custom duty amounting to Rs. 13,18,706/- (Rupees Thirteen Lakh Eighteen Thousand Seven Hundred and Six only) already paid under protest by the Appellant against the said confirmed Custom Duty Rs. 47,14,341/-.

- iv. Ordered confiscation of the total quantity of 15,600 Kgs. of said imported goods Cobalt Base Bare Cast Rod imported by the said Appellant and covered under 11 Bills of Entry as detailed in Table B of para 6 to the said SCN having declared value of Rs. 4,84,26,729/- (Rupees Four Crore Eighty Four Lakh Twenty Six Thousand Seven Hundred and Twenty Nine only) under Section 111 (m) and Section 111(o) of Customs Act, 1962 for the act of willful mis-statement and intentional suppression of facts with regard to classification of the said goods by way of submitting false declaration leading to unlawful, illegal and wrong availment of concessional duty benefit under Sr. No. 390A of the Notification No. 50/2017-Cus Dt.30.06.2017. As the goods were not available physically for confiscation, he allowed the Appellant to redeem the same on payment of redemption fine of Rs. 4,50,000/- (Rupees Four Lakh Fifty thousand only) under Section 125 (1) of the Customs Act, 1962 in lieu of confiscation.
- v. Ordered to recover the interest at an appropriate rate as applicable, on the Customs duty confirmed to the tune of Rs. 47,14,341/- from the Appellant under Section 28AA of Customs Act, 1962.
- vi. Imposed a penalty of Rs. 4,50,000/- (Rupees Four Lakh fifty Thousand only) on the Appellant in terms of the provisions of Section 112 (a) (ii) of the Customs Act, 1962;
- vii. Imposed a penalty of Rs.4,00,000/- (Rupees Four Lakh only) on the Appellant in terms of provisions of Section 114 AA of Customs Act, 1962

6.3 It is observed from the impugned Order-in-Original dated 08.06.2023 that the Appellant submitted interim replies to the Show Cause Notice on 15.05.2022, 22.05.2023, and 01.06.2023. A brief summary of the said interim replies is provided below:-

- (i) At the out set they have already denied all allegations made in the SCN. They have not mis-declared goods imported under 11 Bills of Entry in question filed. There is no intentional suppression of facts with regard to classification of the said goods by way of submitting false leading to unlawful, illegal and wrong availment of the duty benefit under Sr. No. 390A of Notification No. 50/2017-Cus. Dt.30.06.2017, in order to pay less customs duty to Govt. They strongly object to such a wild allegation without any such evidences.



- (ii) They desire to participate in adjudication and make/ file written submission against SCN and also seek opportunity of the personal hearing. However, they require some documents. They will also require cross examination under Section 138B of Customs Act, 1962 of all those officers who had examined/ assessed Bill of Entry, cleared goods and of Chartered Engineer Shri Bhasker G. Bhatt who has issued certificate No. BB/B-15.2/22/SEL/khodiya dated

19.02.2022, which is also relied upon in this SCN for demanding differential duty.

(iii) Speaking Order No. 18/DC/ICD/IMP/SATKUL/2022 dated 25.03.2022 for Re-Assessment Order in Bill of Entry No. 7381329 dated 05.02.2021 is unduly relied upon for the SCN. They bring to notice that they have already filed an Appeal before Commissioner (Appeals) Customs Ahmedabad on 29.04.2022 against the said order dated 25.03.2022. Therefore, SCN may not be decided till final outcome of their Appeal.

(iv) They desire to participate in adjudication and make/file written submission against SCN and also seek opportunity of the personal hearing. However, they requested copies of following documents and also information as shown below.

- a) Test Memo for drawing samples drawn by customs of imported goods
- b) Test Result of samples drawn & received by Customs for the said goods.
- c) Copies of evidence relied upon for changing classification of goods
- d) Copy of other documents/literature etc. relied upon in this SCN for changing classification of goods and demanding differential duty
- e) NIDB data in respect of CTH No. 81052010.

(v) They also desire that they may be allowed some more time to file reply to this SCN and opportunity of Personal Hearing after final outcome of their Appeal.

6.4 The Appellant has submitted that the impugned order dated 08.06.2023, specifically in Para 20.3, notes that the Appellant was provided with the Test Memo, test results of the samples, and NIDB data as requested. However, as per the Appellant's contention, in respect of Bill of Entry No. 2501177 dated 25.01.2021, the proper officers of Customs had carried out due inquiry and physical examination of the goods. Samples were drawn on 06.02.2021 via Test Memo No. 1567 dated 06.02.2021, and the Test Results were received. Based on this, the goods were released on payment of Basic Customs Duty (BCD) at the rate of 2.5%, under the declared classification CTH 81052010. The Bills of Entry at Serial Nos. 2 to 4 (as referred in Table-B) were cleared based on the reports and documents related to Bill of Entry No. 2501177, without any further objection raised by the officers. For Serial No. 5 (Bill of Entry No. 4484321 dated 28.06.2021), the FAG Group raised a query on 29.06.2021 questioning why the B/E should not be assessed under CTH 81059000 instead of CTH 81052010. The Appellant responded, and FAG, in its response dated 01.07.2021 (Query No. 4), clearly recorded "regarding classification, based on importer explanation, there is no objection." A valuation query was also raised, which the Appellant addressed, and the assessment was finalized under CTH 81052010 with duty paid at 2.5% BCD. Bills of Entry at Serial Nos. 6 and 7 were similarly assessed and cleared without further objections, based on prior documentation and reports. For Serial No. 8 (Bill of Entry No. 6411626 dated 26.11.2021), a classification query was again raised, to which the Appellant responded via letter No. SEL/2122/CUSTOMS/QUERY/006, dated 03.12.2021. After considering the reply, the assessment was finalized under CTH 81052010 and the goods were cleared on payment of BCD at 2.5%. Regarding Serial No. 9, the Appellant contends that two separate orders on the same Bill of Entry are legally unsustainable. CA-1 Appeal No.



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S/49-69/CUS/AHD/2022-23 was filed against Speaking Order No. 18/DC/ICD/IMP/SATKUL/2022 dated 25.03.2022, passed by the Deputy Commissioner of Customs, ICD-Khodiyar. That order, being an unconfirmed view of an individual officer, was set aside vide Order-in-Appeal No. AHD-CUSTOM-000-APP-388-2023-24, dated 19.01.2024 by the Commissioner of Customs (Appeals), Ahmedabad. The matter was remanded for fresh examination with directions to follow principles of natural justice and legal provisions, and a decision is pending. Similarly, for Serial Nos. 10 and 11, the Appellant has contended that multiple orders on the same Bill of Entry cannot be upheld in law. Though reassessed differential duty was paid "under protest," the related appeals (O-I-A Nos. AHD-CUSTOM-000-APP-633 and 634-2022-23 dated 31.03.2023) resulted in the reassessment being set aside with directions for fresh adjudication. Consequently, Remand Order No. 21/DC/ICD/IMP/SATKUL/2023, dated 31.10.2023 was passed. The Appellant has further contended that the proper procedure adopted for sampling in the case of Bill of Entry No. 2501177, dated 25.01.2021 was not followed consistently in subsequent Bills of Entry. The methodology for drawing and testing samples was not uniformly applied by the officers. Additionally, the Appellant requested the NIDB data related to CTH 81052010. However, the adjudicating authority only provided data for CTH 81059000. The Appellant later obtained the relevant CTH 81052010 data through an RTI application, which confirmed that various Bills of Entry were finalized and cleared with duty payment at 2.5% under the declared classification of CTH 81052010. Thus, the adjudicating authority not only failed to supply relevant documents and data but also did not follow the prescribed legal procedures for sampling and evidence collection. Furthermore, the impugned order was passed without granting the Appellant the opportunity for cross-examination or invoking Section 138B of the Customs Act, 1962. No independent or new evidence has been adduced by the Department to justify reopening the finalized assessments. The Appellant strongly asserts that the impugned order is based on assumptions and presumptions, which are impermissible under settled legal principles. The order, therefore, deserves to be set aside in the interest of justice.

6.5 It is a well-settled principle of law that a Show Cause Notice (SCN) forms the foundation for any proceedings involving the recovery of duty. It is equally established that, in order to initiate such proceedings, the investigating authority must bring forth evidence on record, consolidate all allegations against the assessee, and clearly incorporate them within the SCN. This ensures that the assessee is given a fair opportunity to respond and defend the case, in accordance with the principles of natural justice. Orders passed ex-parte, based merely on assumptions and presumptions, do not withstand judicial scrutiny under settled law. The impugned order has failed to adequately consider material facts and legal requirements before reaching its conclusions. There are evident violations of the principles of natural justice at multiple stages of the proceedings. Consequently, the impugned order is vitiated ab initio and deserves to be set aside on grounds of gross procedural impropriety and denial of fair opportunity to the Appellant.

6.6 I find that in this case, SCN is based on (1) Chartered Engineer Certificate Ref No. BB/B-15.2/22/SEL/Khodiyar dated 19.02.2022 by Shri Bhasker G. Bhatt (2) Order

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No. 18/DC/ICD/IMP/Satkul/2022 dt. 25.03.2022 passed by Deputy Commissioner of Customs, ICD, Khodiyar in Bill of Entry No. 7381329 dated 05.02.2022.

6.7 It is observed that for above (1) Report No. BB/B-15.2/22/SEL/Khodiyar dated 19.02.2022 given by Chartered Engineer Shri Bhasker G. Bhatt, relied upon by adjudicating authority, it shows that:-

"COBALT BASE BARE CAST ROD' are finished end product suitable for the usage as a welding rod and has direct application as a Welding Rod".

6.8 However, the Appellant has submitted that the Chartered Engineer (CE), Shri Bhasker Bhatt, relied upon an article from the "Alibaba" website to form his opinion. It is contended that Shri Bhatt did not consider the full content of the said article. In support, the Appellant has placed on record the complete version of the online article, which provides additional details regarding the nature and use of the goods. The article clearly describes that the goods are used in the manufacture of valves, seal inserts, rotating sealing rings, drill head cutter edges, etc., and further confirms that the "Cobalt Base Bare Rods" are intermediate products. The Appellant has consistently declared the goods as "Cobalt Base Bare Rods," which are industrial intermediate goods used by downstream manufacturers in the production of final products. The opinion of the CE stating that the product is suitable for use as a welding rod does not necessarily imply that it is classifiable as an "Article of Cobalt" under CTH 81059000. The presence of such an application does not negate the classification under CTH 81052010. It is submitted that the CE's opinion is not adverse to the Appellant per se; rather, it has been incorrectly interpreted by the adjudicating authority to justify reclassification from CTH 81052010 to CTH 81059000. Furthermore, the CE's report dated 19.02.2022 has been retrospectively applied to import transactions from the period 02.05.2020 to 11.12.2020, which is improper and untenable. As per established legal procedure, samples for testing should be drawn and examined contemporaneously from each disputed Bill of Entry where there is a reason to suspect misclassification or duty evasion.

6.9 Further It is also observed that Appellant has on its own, after clearance of goods of Bill of Entry dated 05.02.2022, obtained and produced another opinion with physical verification of goods by another independent Chartered Engineer Shri Atanu Kundu, which shows that :-

"I am of the opinion that the Cobalt Base Bare Cast Rod is an intermediate product of cobalt metallurgy"

6.10 I also find that Appellant has also produced another Report of the same Charter Engineer Shri Bhaskar G. Bhatt given to Commissioner Customs at ICD-Khodiyar on 30-03-2024 in import of "Cobalt Base Bare Cast Rod" imported by M/s P J SUROTIA & CO for the similar goods, which shows that :-

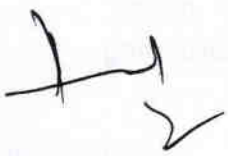
"These imported Cobalt Base Bare Rods are an intermediate phase; because the application of these Cobalt based alloy rod is to offer hardening on the surface by Tungsten Inert Gas (TIG) brazing process."



6.11 In addition to the three separate and independent reports submitted by Chartered Engineers in support of the Appellant's case, it is noted that the Appellant has contended that the term "Intermediate Goods" is not defined under the Customs Act or associated Rules. However, general references—such as those available from publicly accessible sources like Google—describe "intermediate goods" as products used in the production of final or finished goods, also known as consumer goods. For example, salt may be classified as an intermediate good when used in food manufacturing, while also being a finished product when consumed directly. Intermediate goods are typically traded between industries for further processing, resale, or incorporation into other products. These are also commonly referred to as semi-finished goods, as they serve as inputs that form an integral part of the final product. The classification of the subject goods as intermediate in nature is consistent with this understanding and supports the Appellant's claim regarding their intended industrial use.

Intermediate goods are products that are used in the production process to make other goods, which are ultimately sold to consumers.

- The intermediate goods are sold industry-to-industry for resale or to produce other products.
- Intermediate goods are typically used directly by a producer, sold to another company to make another intermediary good, or sold to another company to make a finished product.
- When calculating GDP, economists use the value-added approach with intermediate goods to guarantee that they are not counted twice—once when purchased, and once when the final good is sold.
- Intermediate goods are vital to the production process, which is why they are also called producer goods. Industries sell these goods to each other for resale or to produce other goods. When they are used in the production process, they are transformed into another state.
- There are typically three options for use of intermediate goods. A producer may make and use their own intermediate goods. The producer may also produce the goods and then sell them, which is a highly common practice between industries. Companies buy intermediate goods for specific use in creating either secondary intermediate product or in producing finished good. Inevitably, all intermediate goods are either a component of the final product or are completely reconfigured during the production process.
- There are many intermediate goods that can be used for multiple purposes. Steel is an example of an intermediate good. It can be used in the construction of homes, cars, bridges, planes, and countless other products. Wood is used to make flooring and furniture, glass is used in the production of windows and eyeglasses, and precious metals like gold and silver are used to make decorations, housing fixtures, and jewelry. Intermediate goods can be used in production, but they can also be consumer goods. How it is classified depends on who buys it. If a consumer buys a bag of sugar to use at home, it is a consumer good. But if a manufacturer purchases



sugar to use during the production of another product, it becomes an intermediate good.

6.12 Therefore, in the facts and circumstances of this case, the Chartered Engineer's opinion dated 19.02.2022, as relied upon by the adjudicating authority, loses its evidentiary value. The report has not been subjected to cross-examination during the proceedings, thereby violating the principles of natural justice. Furthermore, the samples were not drawn in accordance with the prescribed legal procedure, and the findings have not been accurately interpreted. It is well established that any expert opinion, including a Chartered Engineer's report, must be corroborated through proper evidentiary procedures, including the right to cross-examine, as envisaged under Section 138B of the Customs Act, 1962. In the absence of such procedural compliance, the report dated 19.02.2022 although not conclusively adverse to the Appellant cannot serve as the sole basis for raising a demand for differential duty. Hence, reliance on this report for sustaining the duty demand is legally untenable.

6.13 With regard to (2) Speaking Order No. 18/DC/ICD/IMP/Satkul/2022, dated 25.03.2022 issued by the Deputy Commissioner of Customs, ICD, Khodiyar in connection with Bill of Entry No. 7381329, dated 05.02.2022, it is submitted that this order constitutes a Record of Unrelied Document (RUD) and cannot be treated as valid "evidence" in the present case. The said Speaking Order reflects the unapproved, individual opinion of a single adjudicating authority and is currently under judicial challenge. Significantly, this order has not been sustained in appeal. Vide Order-in-Appeal No. AHD-CUSTOM-000-APP-388-2023-24, dated 19.01.2024, issued by the Commissioner of Customs (Appeals), Ahmedabad, the aforementioned speaking order was set aside and the matter remanded to the adjudicating authority for a fresh decision. The directions specifically required re-examination of the Appellant's submissions and issuance of a fresh order in compliance with the principles of natural justice and applicable legal provisions. The remanded matter remains pending as of this date. It is a well-settled legal position that the views expressed by an individual officer in an adjudication order do not have any binding or evidentiary value unless upheld by the appropriate appellate forums, including the Hon'ble Supreme Court, in the hierarchy of judicial review. The reliance placed by the adjudicating authority on such untested and one-sided RUDs, including the above Speaking Order and the Chartered Engineer's Report, undermines the evidentiary foundation of the impugned order. In the absence of any credible and substantiated evidence to support the allegations made against the Appellant, the charges remain unproven on merits. Accordingly, the impugned order, being based on inconclusive, unverified, and procedurally flawed documents, cannot be sustained in law and is liable to be set aside.

The Settled law also is that classification of goods in question can be determined considering various factors including the following aspects:-



- (a) HSN with Explanatory Notes provide safe guide for interpretation of an entry for classification.
- (b) Importance to be given to the Act, Rules of Interpretation of the Tariff
- (c) Functional utility, design, shape and predominant usage have also to be taken into consideration
- (d) How the product is known in the market and its actual use will also be a relevant factor to be taken into account.

7.1 It is observed that the Hon'ble Supreme Court in *CCE v. D.L. Steels* – 2022 (381) E.L.T. 289 (S.C.) has categorically held that when the Revenue disputes the classification declared by the assessee, the burden of proof lies on the Revenue to establish that the goods in question fall under the classification claimed by them. In matters of classification, several key factors must be considered: the nature of the product, its composition, end-use, and how it is understood and marketed in trade and commerce. The Rules for Interpretation of the Tariff are also crucial. As per Rule 3 (a) of the General Rules for Interpretation, a specific entry takes precedence over a general one. In the present case, the goods are specifically classifiable under CTH 81052010 as "Intermediate products of cobalt metallurgy." The proposed reclassification under CTH 81059000 as "Articles of Cobalt" cannot be sustained in the absence of substantive evidence supporting such a change. The term "Articles of Cobalt" is generic and broad, and its adoption must meet strict interpretive standards. "Articles of Cobalt" refers to finished items made from cobalt, possessing a distinct market identity and function. However, the goods in question Cobalt Base Bare Cast Rods are used by industrial consumers for surfacing base metals to enhance wear resistance and hardness, thereby increasing the service life of finished components such as valves, valve seats, and pins. These rods are not end-use articles but intermediate materials requiring further processing prior to their actual industrial use. In applying Chapter Notes, Section Notes, and the General Rules of Interpretation, including an analysis of the composition and intended use, the classification of the subject goods as "Articles of Cobalt" is not tenable. The adjudicating authority has erred in classifying the goods under CTH 81059000. The Appellant has consistently maintained that the goods are intermediate products of cobalt metallurgy intended for industrial processes such as alloying and surfacing through melting. As per the Subheading Notes to Chapter 81 specifically the Note that at the relevant time incorporated Note 1 of Chapter 74 defining "Bars and Rods" this interpretation is correct. This definition is now reflected in the Notes to Section XV of the Customs Tariff Act, 1975. Specifically, Notes 3, 5(a), and 9(a) of Section XV are relevant. Note 3 provides that an alloy of base metals is to be classified according to the metal which predominates by weight. Note 9 defines key expressions used in Chapters 74 to 76 and 78 to 81. These interpretative aids reinforce the Appellant's position that the goods are properly classifiable under CTH 81052010 as intermediate products and not as finished "Articles of Cobalt."



9(a) :- Bars and rods

.....
Wire-bars and billets of Chapter 74 with their ends tapered or otherwise worked simply to facilitate their entry into machines for converting them into, for example, drawing stock (wire-rod) or tubes, are however to be taken to be unwrought copper of heading 7403. This provision applies mutatis mutandis to the products of Chapter 81.

7.2 It is observed that the impugned order, in Para 22.14, refers to Chapter Heading 81.05 of the Explanatory Notes (Sixth Edition, 2017) to the Harmonized Commodity Description and Coding System issued by the World Customs Organization (WCO). However, the impugned order fails to correctly apply and consider the relevant legal provisions under Section XV of the Customs Tariff Act, 1975. Specifically, Notes 3, 5(a), and 9(a) of Section XV are crucial in determining the identity and correct classification of the goods in question under CTH 81052010. These Notes provide clear guidelines regarding the classification of alloys and products made from base metals, and when properly applied, support the classification of the subject goods as "intermediate products of cobalt metallurgy." While the Explanatory Notes cited in the impugned order do mention various cobalt alloys that may fall under Heading 81.05, such classification is subject to the application of Note 5 to Section XV, which governs the classification of alloys based on their predominant metal content. The impugned order does not adequately reconcile the Explanatory Notes with these statutory provisions, resulting in a flawed conclusion regarding the classification of the goods.

"(1) The cobalt-chromium-tungsten ("Stellite") group (often containing small proportions of other elements). These are used in the manufacture of Valves and Valve seats, tools etc. because of their resistance to wear and corrosion at high temperatures."

7.3 The Appellant has submitted that cobalt-based alloys, commonly referred to as "Stellites," are widely recognized for their application as corrosion- and oxidation-resistant coatings across various industrial sectors. Cobalt Base Bare Rods (Stellite) provide exceptional resistance to diverse forms of chemical and mechanical degradation over a broad temperature range. These materials exhibit outstanding anti-galling properties, maintain high hardness at elevated temperatures, and demonstrate significant resistance to cavitation erosion, making them highly suitable for industrial use. The rods are designed to bond effectively with all weldable grades of steel and stainless steel articles. Specifically formulated to withstand a wide array of harsh environments—including abrasion, corrosion, galling, oxidation, and erosion—Cobalt Base Bare Rods retain their structural and functional integrity even at temperatures reaching up to 1500°F (800°C). Their proven performance in demanding conditions underscores their industrial relevance and supports their classification as intermediate products used in the manufacture of finished components.

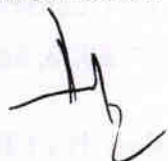
7.4 The Appellant has further submitted that a similar issue was adjudicated in the case of M/s Sri Murugan Enterprises, wherein the Commissioner of Customs (Appeals-I), Chennai, vide Order-in-Appeal No. C. Cus. I/336/2023 dated 15.11.2023, set

aside the differential duty demand raised under CTH 81059000. The dispute in that case also pertained to the classification of goods—whether they fall under CTH 81052010 or CTH 81059000. The Appellant has furnished a copy of the said Order-in-Appeal dated 15.11.2023. Upon perusal, it is evident that the facts and legal issues involved are materially similar to those in the present case. Accordingly, the reasoning and outcome of the said decision are squarely applicable here, supporting the Appellant's contention that the differential duty demand under CTH 81059000 is unsustainable and ought to be set aside.

7.5 The Appellant has also contended that they were provided with generic information regarding consignments cleared under CTH 81052010 by the Office of the Directorate General of Valuation (DGOV), Mumbai, in relation to imports made under the same classification. The data obtained under the Right to Information Act, 2005, reveals that across India, goods such as rods, welding wires, bars, powders, articles of cobalt, and cobalt pieces were consistently cleared under CTH 81052010 without dispute. This information demonstrates a consistent pattern of classification and clearance of similar goods under CTH 81052010, thereby supporting the Appellant's case. The Appellant asserts that, based on the principle of parity, the impugned order seeking reclassification of identical goods ought to be set aside, as it contradicts the established nationwide practice and lacks uniformity in classification.

7.6 It is a settled principle of law that the burden of proof lies with the taxing authorities to establish that a particular case or item is taxable under the classification asserted by the department. The Hon'ble Courts have consistently held that there must be tangible material evidence on record to arrive at such a finding. It is incumbent upon the department to present such evidence at the stage of initial adjudication. In the present case, the Revenue has failed to discharge this burden by not adducing any credible or substantive evidence. Furthermore, it is noted that clearances of "Cobalt Base Bare Cast Rods" under CTH 81052010 were previously allowed upon query and clarification regarding their classification as intermediate goods, and the consignments under such Bills of Entry were released without objection. A mere assertion, without supporting evidence, is insufficient to warrant a change in classification. Additionally, it is well settled that where entries in the Harmonized System of Nomenclature (HSN) and the Customs Tariff are not aligned, reliance cannot be placed solely on the HSN for classification under the Indian Tariff. One of the key grounds upon which the impugned order has based its conclusion is the HSN entry, which, in the absence of alignment and supporting evidence, cannot be determinative.

7.7 It is noted that the Appellant has claimed the benefit of exemption under Notification No. 50/2017-Cus., Sr. No. 390A. The effective rate of Basic Customs Duty (BCD) was revised to 2.5% through insertion of Entry No. 390A via Notification No. 25/2019-Cus., dated 06.07.2019, which was introduced unconditionally. It is a well-established legal principle that when an exemption is claimed under a notification, the onus lies on the claimant to prove that the goods are unambiguously covered under the



scope of the exemption. In the present case, the Appellant has substantiated their claim with credible documentary evidence, establishing that the goods in question are intermediate products falling under CTH 81052010, and thereby are eligible for the exemption claimed. Once the Appellant has discharged this initial burden, it becomes incumbent upon the Revenue to rebut the claim with equally sound and cogent evidence if they seek to deny the benefit of the exemption. However, the adjudicating authority has failed to discharge this shifted burden and has not produced any contrary evidence to justify the denial of the exemption. In the absence of any such rebuttal, the contentions supported by documentary evidence cannot be arbitrarily rejected. Accordingly, the impugned order is also liable to be set aside on this ground.

7.8 I am also of the considered view that the issue of classification of goods under one heading or another is a question of law, not merely a statement of fact. Consequently, claiming a particular classification under the Customs Tariff Act does not amount to misstatement, let alone willful misstatement or suppression of facts. It is a settled legal position that classification is often a matter of interpretation and bona fide belief on the part of the assessee. In *Raj Television Network v. CCE, Chennai, 2007 (215) ELT 71 (Tri. - Chennai)*, the Hon'ble Tribunal clearly held that classification is a departmental function, and hence, an importer cannot be accused of having misclassified the goods merely for claiming a different classification. Further, in *Northern Plastics Ltd. v. CCE, 1998 (101) ELT 549 (SC)*, the Hon'ble Supreme Court held that when the description of goods has been correctly and fully disclosed in the Bill of Entry or classification declaration, and the assessee merely claims an exemption or classification benefit whether admissible or not it does not constitute misdeclaration, but is rather a matter of belief. Similarly, in *CCE, Delhi v. Ishaan Research Lab (P) Ltd., 2008 (230) ELT 7 (SC)*, the Hon'ble Apex Court held that where there exists a bona fide dispute on classification, the assessee cannot be held guilty of suppression or misstatement. In light of these precedents and in the specific facts of the present case, where the dispute pertains solely to the change in classification of the goods imported by the Appellant, no charge of intentional misclassification or misdeclaration can be sustained. The Appellant's actions are clearly based on a bona fide interpretation of the applicable tariff entries.

7.9 I am also of the considered view that classification cannot be altered solely on the basis that the proposed classification attracts a higher customs duty than the declared classification, especially without any disclosed or valid reason.

7.10 The impugned order has erred in holding that the product imported by the Appellant is merely a cobalt alloy manufactured by a Chinese supplier, based on the proportion of elements fused with cobalt, and in consequently classifying it as an article of cobalt.

7.11 The Appellant has produced Analytical Report No.39/2022-23, dated 09.03.2023 provided to Appellant by department for another Bill of Entry at ACC, regarding classification of "Article of Titanium" whether under CTI 81089010 or under CTI



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81089090. The Appellant rely Para 5 of Analytical Report No.39/2022-23, dated 09.03.2023 which shows as under:-

"Wrought Titanium is classifiable under CTH 81089010, if such imported products are in the form of beaten shapes such as plates, bars, tubes, rods, billets etc. For manufacturing the final Product, one of the prerequisites is that the titanium should be in wrought form so that it could be further processed by processes like cutting, forming machining and joining and made into necessary shape and dimension, as may be required Such final product becomes an Article of Titanium', and hence classifiable under CTH 81089090."

7.12 I find that the above paragraph illustrates how classification of imported goods can be determined under CTH 81089010 or 81089090. The principle is that titanium products in the form of beaten shapes such as plates, bars, tubes, rods, billets, etc. are considered unwrought titanium and classified under CTH 81089010. By analogy, in this case involving cobalt, the same legal principle applies. Cobalt goods that are usable or used in industrial processes fall under CTH 81052010. The Appellant has declared the goods in question as "intermediate products of cobalt metallurgy," and these goods have previously been cleared by competent officers following proper examination and final assessment. Therefore, classification under CTH 81052010 should be upheld in light of the facts and evidence presented on record.

7.13 The Appellant has contended that the department has failed to produce any reliable or acceptable evidence to justify the change in classification from CTH 81052010 to 81059000. The RUDs mentioned in the SCN do not constitute credible evidence in this case. Therefore, the impugned order, lacking any substantiation for altering the classification, is without merit and deserves to be set aside. Furthermore, the Appellant argues that since the goods were neither seized nor withheld by customs officers, the imposition of a Redemption Fine under Section 125 of the Customs Act, 1962, is untenable. The redemption fine imposed is contrary to established law and should be quashed. The Appellant relies on decisions such as *Shiv Kripa Ispat Pvt. Ltd v. CCE*, 2009 (235) ELT 623 (Tri-LB), upheld by the Hon'ble Bombay High Court in 2015 (318) ELT A259 (Bom), which support this position. I concur with the Appellant's contentions regarding the redemption fine and respectfully follow the precedents cited.

7.14 The Appellant contended against the penalties under Section 112 (a) (ii) and Section 114AA of the Customs Act, 1962 imposed and contended that proceedings for change of classification to higher duty are nothing but interpretation classification entry, not having deliberate attempt to evade duty by willful contravention of provisions of law applicable. The penalty imposed would not survive against Appellant and it requires to be set aside.

7.15 The Appellant has also contended that Pre-Consultation with noticee before SCN was carried out in SCN dated 25.04.2022, but not for SCN dated 06.01.2023. The Adjudicating authority has given his finding in para 11 of the impugned order. However, I

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find that no Pre-Consultation with noticee is for SCN dated 06.01.2023. The narration in SCN & O-I-O reflect two different situations, giving inference that what was not spelt out in SCN is mentioned in O-I-O and it may lead to inference that the impugned order also appears beyond the scope of SCN to that extent.

7.16 The Appellant has also produced copy of a Bill of Entry No. 9726413, dated 26.04.2025 by M/s P J Surotia & Co, with a clarification wherein Out of Charge (OOC) is allowed on 03.05.2025, after a specific query on classification under CTH 81052010 and its clarification submitted by the importer. This is additional evidence showing that "Cobalt Base Bare Cast Rod" are being cleared at ICD-Khodiyar undisputedly on payment of duty on import under the CTH 81052010, which this Appellant claims.

8. In view of the above findings, I am of the considered opinion that the principles of natural justice were violated at various stages of the adjudication proceedings. The adjudicating authority has failed to produce reliable evidence on record to justify changing the declared classification from CTH 81052010 to CTH 81059000. Considering the nature of the product, its composition, usage, market identity, and the relevant evidence submitted by the Appellant, the goods in question "COBALT BASE BARE CAST ROD" are correctly classifiable under CTH 81052010 as declared by the Appellant. Therefore, the impugned order altering the classification to CTH 81059000 is unsustainable on the facts of this case. Further, the ex-parte Order-in-Original No. 68/ADC/VM/O&A/2023-24, dated 08.06.2023 passed by the Additional Commissioner, Customs, Ahmedabad, which confirmed the demand of differential Customs Duty of Rs. 47,14,341/- with interest and denied the benefit of unconditional Notification No. 50/2017-Cus [Sr. No. 390A] dated 30.06.2017, is also unsustainable. Moreover, this is not a fit case for imposing a Redemption Fine or penalties. Accordingly, I set aside the Redemption Fine and penalties imposed. On multiple grounds of fact and law, the impugned Order No. 68/ADC/VM/O&A/2023-24, dated 08.06.2023 is not sustainable and therefore deserves to be set aside.

9. In view of the above, the Appeal filed by the Appellant is allowed with consequential reliefs, if any, in accordance with the law.



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

F. No. CAPPL/COM/CUSP/1318/2023-APPEAL
(S/49-251/CUS/AHD/2023-24)

1240

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

Date: 30.05.2025

By Registered post A.D

To,

✓ M/s Satkul Enterprises Ltd,
Plot No. 124, Sub Plot No. 03,
B/s. Rajni Estate,
Rakhial,
Ahmedabad – 380 023

Shri P. P. Jadeja
(Consultants & Practitioners)
53 – Sarovar Complex,
Off. C. G. Road,
B/h. Jain Derasar,
Navrangpura,
Ahmedabad – 380 009

Copy to:

1. The Chief Commissioner of Customs, Gujarat, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Ahmedabad.
3. The Additional Commissioner, Customs, Custom House, Ahmedabad
4. Guard File.

