

	सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT <u>Phone No.02838-271165/66/67/68</u> <u>FAX.No.02838-271169/62,</u> <u>Email-adj-mundra@gov.in</u>	
A. File No.	:	CUS/APR/INV/97/2025-GR-2-O/o Pr. Commr- Cus-Mundra
B. Order-in-Original No.	:	MCH/ADC/AKM/341/2024-25
C. Passed by	:	Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	:	17.03.2025 17.03.2025
E. Noticee(s) / Party / Importer	:	M/s. Novanext Energies Pvt. Ltd. (IEC AAHCN9295Q)
F. DIN	:	20250371MO0000555F2C

1. यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए 3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

**“सीमा शुल्क आयुक्त (अपील), चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड,
नवरंगपुरा, अहमदाबाद 380009”**

“The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by –

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ऊँटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the Customs Act, 1962 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (Appeals) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

FACTS OF THE CASE IN BRIEF

M/s. Novanext Energies Pvt. Ltd. (IEC AAHCN9295Q), (hereinafter referred to as “the importer” or “Novanext” for sake of brevity) having address at SHED NO. C-2/334, GIDC Shanker Tekri Udyognagar, Jamnagar - 361004, had filed Home Consumption (H) Bills of Entry Nos. 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025 for import of goods declared as “PET FILM ROLLS Core ID.:152MM”, “White PVDF Film MODEL-18WM” and “Transparent PET Film MODEL-NYH210-DT” falling under CTH 39206290 and 39209999 through their Customs Broker M/s. Seashell Logistics Private Limited, CB code AALCS1893BCH012 (hereinafter referred as ‘the CB’ for sake of brevity). The details of the B/E, are as follows: -

Table-A

Sr No.	B/E No. & date	Bill of Lading No. & Date Container Nos.	Declared Goods	Quantity (as declared) in KGs	Declared Assessable Value (in Rs.)
1	8085213 & 30-01-2025	SHFE40061800 dated 13.01.2025 HPCU4721715, PIDU4315020, PIDU4315204, PIDU4315225 and PIDU4315251	PET FILM ROLLS Core ID.:152MM - 0.28MMx1142MMx1500M/Roll- DS10CTransparent (110 rolls)	73865	85,28,835
			PET FILM ROLLS Core ID.:152MM - 0.29MMx1142MMx1500M/Roll- DS10CTransparent (33 ROLLS)	22950.84	26,50,023
			PET FILM ROLLS Core ID.:152MM - 0.29MMx1142MMx1400M/Roll- DS10CTransparent (1 ROLLS)	649.11	74,950
			PET FILM ROLLS Core ID.:152MM - 0.282MMx1142MMx1500M/Roll- DS10Translucent (36 ROLLS)	24346.44	25,80,743
2	8092710 & 30-01-2025	027E803205 dated 12.01.2025 WHSU6541689 , WHSU5250570 , WHSU6178911 and WHSU6283476	White PVDF Film MODEL-18WM SPECIFICATION- 1152*0.018*6000-4 ROLLS	831.1	6,66,751
			Transparent PET Film MODEL- NYH210-DT SPECIFICATION- 1142*0.288*1500-142 ROLLS	99968	1,11,62,263
3	8112725 & 31-01-2025	SHFE40064400 dated 17.01.2025 DFSU6378603, PCIU8544593, PCIU8916181 PCIU9130561 and PCIU9364852	PET FILM ROLLS Core ID.:152MM - Co-ex 6027 White - 0.305MMx1140MMx1200M/Roll (80 ROLLS)	47398.4	57,66,227
			PET FILM ROLLS Core ID.:152MM - DS10C-UVTransparent - 0.300MMx1142MMx1500M/Roll (42 ROLLS)	24173.94	31,67,088
			PET FILM ROLLS Core ID.:152MM - DS10 Translucent - 0.282MMx1142MMx1500M/Roll (72 ROLLS)	48692.88	51,03,500

2. Intelligence indicated that the Importer appeared to have availed exemption under entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017, without complying with the condition no. 22 of the said notification. As per the said notification, importer is required to comply with condition no. 9 and 22 of the said

notification, for availing benefit of exemption under entry no. 237 of the said notification. Based on the intelligence, the container specified at Table-A in respect of 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025 were put on hold for SIIB examination. The examination of the goods was carried out at PSA Ameya (Honeycomb) CFS, Mundra and Landmark CFS, Mundra on 07.02.2025 and 11.02.2025. During examination, the goods were found as per packing list. Prima facie, the goods were found to be as declared. Further, no other item or any concealment was found during the course of examination.

3. Entry No. 237 of Notification No. 50/2017-Customs dated 30.06.2017 provides exemption from payment of Basic Customs Duty (BCD) on goods specified therein subject to condition no. 9 and condition no. 22 specified in the said notification. As per condition 22(a), in all cases, certificate is required from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of the exemption. However, in the present case, the importer has not furnished the said certificate at the time of import. Accordingly, it appears that the exemption of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017 claimed by the importer is not available to them.

4. During the course of investigation, statement of Shri Shabbir Makati, S/o Shri Saifuddin Makati, Managing Director of M/s. Novanext Energies Pvt. Ltd., was recorded under Section 108 of the Customs Act, 1962 on 12.02.2025, wherein, he inter-alia stated that:-

- Novanext is engaged in manufacture of Backsheet used in manufacture of Solar Photovoltaic Modules;
- Novanext had filed Bills of Entry Nos. 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025 for import of "PET FILM ROLLS Core ID.:152MM", "White PVDF Film MODEL-18WM" and "Transparent PET Film MODEL-NYH210-DT" falling under CTH 39206290 and 39209999;
- They had taken the benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017. As per the said notification, exemption is available from payment of prescribed goods used in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules. They are engaged in manufacture of PET based backsheet and supply the same to solar module manufacturers. Accordingly, they have taken benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017;
- It was unintentionally wrongly believed that condition no. 22 was not applicable to them. Hence, Novanext had not furnished certificate as stipulated in condition no. 22 of Notification No. 50/2017-Customs dated 30.06.2017, at the time of import, in respect of goods imported vide bills of entry no. 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025. However, they have applied to MeitY for the certificate as required under condition no. 22 Notification No. 50/2017-Customs dated 30.06.2017.

- They had always followed all the other requirements for availing benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017 reaffirming their intent to adhere to all the regulatory requirement;
- Novanext had availed benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017, prior to filing of Bills of Entry nos. 8085213, 8092710 and 8112725. He would provide the same;
- Novanext did not furnish certificate as stipulated in condition no. 22 of Notification No. 50/2017-Customs dated 30.06.2017, at the time of import, in respect of earlier bills of entry.

5. The importer vide letter dated 26.02.2025 stated that:-

- They had received Concessional Customs Duty Certificate (CCDC) from the Ministry of Electronics and Information Technology (MeitY) dated 14-2-2025. However, the CCDC received is for the Qty of 2,14,652.07 Kgs of PET films, whereas the quantity of PET films in the two BOE No. 8092710 and 8085213 is 2,21,779.39 Kgs indicating a shortfall of 7127.32 Kgs. The short quantity recommended by MeitY was due to them not being able to convey their requirement for the Month of February and March 2025 in a format they use it. They have now again applied for additional quantity to cover for the goods already OOC but in customs area and for the BOE No 8112725 which is not examined yet and also for the goods on waters which is expected to arrive soon. They are expecting the additional certificate including our future requirement in the due course of time to ensure complete compliance moving forward;
- They requested to allow for the release of the import consignment of PET films/PVDF Film held under BOE No. 8092710 and 8085213 granting the duty exemption under Notification No. 50/2017 at Sr. no. 237 for the quantity for which they have already got the CCDC certificate and accept a Bank Guarantee for the shortfall quantity of 7127.32 Kgs of PET Films which would be released upon us providing the CCDC for remaining qty in due course;
- If Bank Guarantee cannot be accepted for the shortfall quantity, grant a provisional release, then allow for the release of only one BOE the quantity of which would be covered by CCDC. They would again like to re-affirm that they are seeking this exemption as they satisfy the core condition of being a bonafide manufacturer of a single product Backsheet which is supplied only to Solar module manufacturers and thus are eligible to get this duty exemption on this imported cargo of PET Films;
- **In case above options cannot be considered favorably, they seek the permission to reexport the above cargo,**

6. It appears that the importer has wrongly availed the benefit of Entry no. 237 of Notification No. 50/2017-Customs dated 30.06.2017 and basic custom duty is applicable on the said goods. Accordingly, it appears that the importer is liable to

pay Customs Duty amounting to Rs. 51,96,382/- (BCD of Rs. 40,03,376/- + SWS of Rs. 4,00,338/- + IGST of Rs. 7,92,668/-) as calculated in **Table-B** below: -

Table-B

BE No	BE Date	CTH	Item Desc	Assessable Value	BCD Rate %	BCD Rs.	SWS Rs.	IGST	Total Duty
808 521 3	30-01-2025	3920 6290	PET FILM ROLLS Core ID.:152MM - 0.28MMx1142M Mx1500M/Roll- DS10CTransparent (110 rolls)	85,28, 835	10	8, 52,88 4	,288	1,6 8,871	11,0 7,043
808 521 3	30-01-2025	3920 6290	PET FILM ROLLS Core ID.:152MM - 0.29MMx1142M Mx1500M/Roll- DS10CTransparent (33 ROLLS)	26,50, 023	10	2, 65,00 2	,500	5 2,470	3,4 3,973
808 521 3	30-01-2025	3920 6290	PET FILM ROLLS Core ID.:152MM - 0.29MMx1142M Mx1400M/Roll- DS10CTransparent (1 ROLLS)	74, 950	10	7,495	749	1,484	9,728
808 521 3	30-01-2025	3920 6290	PET FILM ROLLS Core ID.:152MM - 0.282MMx1142M Mx1500M/Roll- DS10Translucent (36 ROLLS)	25,80, 743	10	2, 58,07 4	,807	5 1,099	3,3 4,980
809 271 0	30-01-2025	3920 9999	White PVDF Film MODEL-18WM SPECIFICATION- 1152*0.018*6000 -4 ROLLS	6,66,7 51	15	1, 00,01 3	,001	1 9,803	1,2 9,817
809 271 0	30-01-2025	3920 6290	Transparent PET Film MODEL- NYH210-DT SPECIFICATION- 1142*0.288*1500 -142 ROLLS	1,11,62,2 63	10	11, 16,22 6	,623	2,2 1,013	14,4 8,862
811 272 5	31-01-2025	3920 6290	PET FILM ROLLS Core ID.:152MM - Co-ex 6027 White - 0.305MMx1140M Mx1200M/Roll (80 ROLLS)	57,66, 227	10	5, 76,62 3	,662	1,1 4,171	7,4 8,456

811 272 5	31- 01- 2025	3920 6290	PET FILM ROLLS Core ID.:152MM - DS10C- UVTransparent - 0.300MMx1142M Mx1500M/Roll (42 ROLLS)	31,67, 088	10	3, 16,70 9	,671	31 6 2,708	4,1 1,088
811 272 5	31- 01- 2025	3920 6290	PET FILM ROLLS Core ID.:152MM - DS10 Translucent - 0.282MMx1142M Mx1500M/Roll (72 ROLLS)	51,03, 500	10	5, 10,35 0	,035	51 1,0 1,049	6,6 2,434
Total				3,97,00, 380		40,0 3,37 6	4,00, 338	7,92,6 68	51,96 ,382

7. LEGAL PROVISIONS

Legal provisions applicable in this case under the Customs Act 1962 are as follows:

7.1. ***Entry No. 237 of Notification No. 50/2017-Customs, dated the 30th June, 2017, reads as follows:-***

Sr. No.	Chapter or Heading or sub- heading or tariff item	Description of goods	Standard rate	IGS T	Condi- tion No
(1)	(2)	(3)	(4)	(5)	(6)
237	3208, 3815, 3901, or 3920	<i>The following goods for use in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheets, which are used in the manufacture of solar photovoltaic cells or modules, namely: - (i) EVA resin; (ii) EVA masterbatch; (iii) Poly ethylene terephthalate (PET) film; (iv) Poly vinyl fluoride (PVF); (v) Poly vinyl difluoride (PVDF); (vi) Adhesive resin; and (vii) Adhesive hardner</i>	Nil	-	9 and 22

7.2. Condition no. 9 and 22 of notification Notification No. 50/2017-Customs, dated the 30th June, 2017 read as follows:-

9. If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

22. If, the importer at the time of import,-

(a) furnishes in all cases a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of the exemption and the said officer certifies that the goods are required for the specified purpose.

7.3. Section 46 : Entry of goods on importation :

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

(4A) The importer who presents a BE shall ensure the following :

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

7.4. Section 111: Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable for confiscation:

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54.

7.5. Section 112: Penalty for improper importation of goods, etc.

Any person,—

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing,

or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable,—

- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;
- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.

7.6. SECTION 125: Option to pay fine in lieu of confiscation.

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

Provided further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

8. Outcome of The Investigation:

8.1. The entry at Sr. No. 237 of Notification No. 50/2017-Customs dated 30.06.2017 provides exemption from payment of BCD on goods specified therein which are used in the manufacture of solar photovoltaic cells or modules. The said exemption is subject to condition no. 9 and condition 22 specified in the above notification. As per condition no. 22, in all cases, certificate is required from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of the exemption. However, the importer has not furnished the above referred certificate at the time of import. Where any exemption is subject to any condition(s), such condition(s) are required to be fulfilled for availing the exemption. However, in the instant case, the importer has failed to fulfil the one of the essential condition for availing exemption under entry no. 237 of the above referred notification, i.e. condition no. 22. Accordingly, it appears that the importer has wrongly availed benefit of exemption from BCD under Entry No. 237 of Notification No. 50/2017-Customs dated 30.06.2017, without complying with the condition no. 22, subject to which the exemption is available.

8.2. After introduction of self-assessment vide Finance Act, 2011, the onus lies on the importer for making true and correct declaration with respect to all aspects of the Bill of Entry and to pay the correct amount of duty. In light of the discussions in the preceding paragraphs, it becomes evident that the importer has wrongly availed benefit of exemption under entry at Sr. No. 237 of Notification No. 50/2017-Customs dated 30.06.2017 and appeared to have evaded Customs Duty amounting to Rs. 51,96,382/- as detailed in Table-B above.

9. WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

Importer during the investigation period vide letter dated 27.02.2025 informed that they are well aware about the legal provisions in the subject case and charges going to be levelled against them. Thus, they have waived off the right of the Show Cause Notice and personal hearing with the request to decide the matter on priority.

DISCUSSION AND FINDINGS

10. I have gone through the facts of the case and the noticee's submissions for waiver of Show Cause Notice and Personal hearing. Hence, I will decide the charges against Noticee based on the facts available before me on records. I now proceed to frame the issues to be decided in the instant case before me. On a careful perusal of the subject case records, I find that following main issues are involved in this case, which are required to be decided: -

- a) Whether the Bills of entry nos. 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025 are liable to be re-assessed and the Basic Customs Duty, SWS and IGST thereon is required to be re-determined as Rs. 51,96,382/- (BCD of Rs. 40,03,376/- + SWS of Rs. 4,00,338/- + IGST of Rs. 7,92,668/-) or otherwise;
- b) Whether the imported goods having declared value as **Rs. 3,97,00,380/- (Rupees Three Crore Ninety Seven Lakh Three Hundred Eighty Only)** of the consignment covered under above said Bills of Entry are liable for confiscation under Section 111 (m) of Customs Act, 1962 or otherwise;
- c) Whether the Importer M/s. Novanext Energies Pvt. Ltd. is liable to penalty under Section 112(a)(ii) of the Customs Act, 1962 or otherwise.

11. I find that the issue revolves around the claim of exemption benefit of Sr. No. 237 of Notification No. 50/2017-Customs dated 30.06.2017. Importer M/s. Novanext Energies Pvt. Ltd. filed total 03 Bill of Entry Nos. 8085213 and 8092710 dated 30.01.2025 and BE no. 8112725 dated 31.01.2025 for import of goods declared as “PET FILM ROLLS Core ID.:152MM”, “White PVDF Film MODEL-18WM” and “Transparent PET Film MODEL-NYH210-DT” falling under CTH 39206290 and 39209999. The importer at the time of filing of Bills of Entry claimed benefit of sr. no. 237 of Notification No. 50/2017 wherein full duty exempted subject to fulfilment of certain Condition i.e. Condition No. 9 & 22 of the said Notification. Which are reproduced below for better appreciation:

9. If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty or for Specified End Use) Rules, 2022.

22. If, the importer at the time of import,-

(a) furnishes in all cases a certificate to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of the exemption and the said officer certifies that the goods are required for the specified purpose.

12. I find that goods were found as declared under the import documents and nothing adverse found during physical examination of the goods. I find that the importer has claimed the Notification benefit of sr. no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017 and for claiming the said benefit every Importer has to comply or fulfil the condition no. 9 & 22 (as stated above). As per condition 22(a), in all cases, certificate is required from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Electronics and Information Technology (MeitY) recommending the grant of the exemption. However, in the present case, the importer has not furnished the said

certificate at the time of import. Thus, I find that the Importer is not eligible for the said exemption benefit claimed in the instant case.

13. I observed that Shri Shabbir Makati, Managing Director of M/s. Novanext Energies Pvt. Ltd during his statement stated that exemption is available from payment of prescribed goods used in the manufacture of EVA (Ethylene Vinyl Acetate) sheets or backsheet, which are used in the manufacture of solar photovoltaic cells or modules. They are engaged in manufacture of PET based backsheet and supply the same to solar module manufacturers. Accordingly, they have taken benefit of entry no. 237 of the Notification No. 50/2017-Customs dated 30.06.2017.

From the said statement, I noticed that the Importer had not appreciated the fact that they have not complied with the condition for the availment of the said exemption benefit which was not actually available for the imported goods. Without fulfilment of any mandate condition, exemption benefit cannot be extended under the relevant notification.

14. I noticed that the Importer during the investigation period through letter dated 26.02.2025 stated that they had received Concessional Customs Duty Certificate (CCDC) from the Ministry of Electronics and Information Technology (MeitY) dated 14-2-2025. However, the CCDC received is for the Qty of 2,14,652.07 Kgs of PET films, whereas the quantity of PET films in the two BOE No. 8092710 and 8085213 is 2,21,779.39 Kgs indicating a shortfall of 7127.32 Kgs. The short quantity recommended by MeitY was due to them not being able to convey their requirement for the Month of February and March 2025 in a format they use it. They have now again applied for additional quantity to cover for the goods already OOC but in customs area and for the BOE No 8112725 which is not examined yet and also for the goods on waters which is expected to arrive soon. They are expecting the additional certificate including our future requirement in the due course of time to ensure complete compliance moving forward. Based on the same, the importer has requested to release the consignment held under BOE No. 8092710 and 8085213 granting the duty exemption under Notification No. 50/2017 at Sr. no. 237 for the quantity for which they have already got the CCDC certificate.

With respect of this contention, I find that there is no merit in the said request of the Importer, since the Concessional Customs Duty Certificate (CCDC) from the Ministry of Electronics and Information Technology (MeitY) dated 14-2-2025 has been obtained by the Importer after importation of said goods covered under these 03 Bills of Entry which is not permissible as per the provisions laid down under the Customs Act, 1962. I find that import has been defined in the Customs Act as bringing into India from a place outside India which includes the territorial waters of India. Based on the said definition of import, I am not prepared to accept the Importer's request to extend the notification benefit for the goods which were already landed even before obtaining Concessional Customs Duty

Certificate (CCDC) from the Ministry of Electronics and Information Technology (MeitY). I have no doubt that any goods or articles which has landed in India or in a ship which has entered the territorial waters of India would be liable to the payment of duty or to confiscation if the import thereof is subject to any conditions which have been violated being brought into India.

15. With the introduction of self-assessment under Section 17 of the Customs Act, 1962, more faith is bestowed on the importers, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the Importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appeared that the Importer has wilfully violated the provisions of Section 17(1) of the Act inasmuch as importer has failed to correctly self-assess the impugned goods by availing wrong notification benefit and has also violated the provisions of Sub-section (4) and (4A) of Section 46 of the Customs Act, 1962.

16.1 I find that '*Ignorantia Juris Non Excusat*' is an important principle in law. This principle places the responsibility on individuals to know and follow the law, regardless of whether they were aware of the law or not. In other words, a person cannot avoid liability by claiming that they did not know the law.

16.2. In this connection, I observe that the burden to prove the eligibility of exemption notification is on importer; and that the exemption notification are subject to strict interpretation. I place reliance upon following relevant legal pronouncements:

- Hon'ble Supreme Court in the case of **Hotel Leela Venture Ltd. Vs. Commr. of Customs (General), Mumbai [2009(234) ELT-389(SC)]** held that the burden was on the appellant to prove that the appellant satisfies the terms and conditions of the Exemption Notification. It is well settled that Exemption Notification have to be read in the strict sense.
- Hon'ble Supreme Court in the case of **Krishi Upaj Mandi Samiti v/s. CCE reported in 2022 (58) GSTL 129 (SC)** held that law of the issue of interpretation of taxing statute has been laid down in catena of decisions that plain language capable of defined meaning used in a provision has to be preferred and strict interpretation has to be adopted except in cases of ambiguity in statutory provisions.
- Hon'ble Supreme Court in the case of **Uttam Industries V/s. CCE reported in 2011 (265) ELT 14(SC)** held that it is well settled law that exemption notification should be construed strictly and exemption notification is subject to strict interpretation by reading it literally.
- The constitutional bench dated July 30, 2018 of Hon'ble Supreme Court of India in the case of **COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI ... APPELLANT(S) VERSUS M/S. DILIP KUMAR AND COMPANY & ORS. (CIVIL APPEAL NO. 3327 OF 2007)** held that the benefit of ambiguity in exemption

notification cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue/state. Exemption notifications are subject to strict interpretation.

Relevant Para the said judgement is reproduced hereunder;

"41. After thoroughly examining the various precedents some of which were cited before us and after giving our anxious consideration, we would be more than justified to conclude and also compelled to hold that every taxing statue including, charging, computation and exemption clause (at the threshold stage) should be interpreted strictly. Further, in case of ambiguity in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of ambiguity must be strictly interpreted in favour of the Revenue/ State."

16.3 Hence, from above discussions, I find that that the importer had resorted to wrongly claimed the benefit of exemption notification in the Bills of Entry of the said imported goods which shows the ulterior motive of the importer to evade payment of applicable Customs Duty in respect of said imported goods.

17. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:

(i). As far as confiscation of goods are concerned, Section 111 (m) of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

"(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods, imported has been imported by availment of wrong claim of notification benefit of sr. no. 237 of Not. No. 50/2017-Cus. Thus, the same are liable to confiscation. As discussed in the foregoing para's, it is evident the Importer has filed bills of entry by availing benefit of sr. no. 237 of Not. No. 50/2017 dated 30.06.2017 however the the product under import is not eligible for the concessional rate of duty. Thus, I have no doubt in my mind that the Importer is not eligible for the benefit and remain silent despite the fact that burden to prove for availment of notification benefit is lies with them. If the consignment had not intercepted by the department, the duty evasion would not have been unearthed. In light of these acts of wrong claim of notification benefit in the bills of entry, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

(iii). As the impugned goods are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCN. The Section 125 ibid reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1/or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit.”

I find that there is no policy restriction on the imported goods and the case is based only for wrong filing of Bill of Entry under Notification No. 50/2017-Cus dated 15.06.2017 under Sr. No. 237. I find that the goods were found as declared during the examination. Further, I noticed that the importer has valid IGC RD Cert. details of which have been entered by the Importer at the time of filing of the Bills of Entry. I noticed that the Importer after objection raised by the department immediately approached the Ministry of Electronics and Information Technology (MeitY) and obtained the required Certificate as per the required. The fact is different that the said Certificate is not applicable for the present shipment, however, the said approach of the importer shown their willingness to comply the required condition. Further, the importer also during the statement stated that they were not aware about the said condition and unintentionally wrongly believed that condition no. 22 was not applicable to them.

(iv) With prejudice to the above, I noticed that the importer has incurred substantial costs due to storage, detention and other related charges, in addition to freight, transportation, and other expenses. In this case, the Importer has not realized any profit margin in respect of the present goods. I observed that the key factor for determination the quantum of redemption fine is that it should discourage the importer from repeating the offence. The general consensus in such type of cases is that the redemption fine should be sufficient to discourage people from violating the law repeatedly. Since, the Importer has already shown their willingness to comply with all import condition and also promptly approached the Ministry of Electronics and Information Technology (MeitY) and obtained the required. This positive attitude of the Importer reflects their bonafide. In light of these circumstances, I believe a lenient approach may be considered when determining the quantum of redemption fine and penalty.

18. I find that the Importer had filed impugned 03 bills of entry with the benefit of 'NIL' BCD under sr. no. 237 of Notification No. 50/2017-Cus dated 15.06.2017 which was actually not available to the impugned goods. Thus, the importer M/s. Novanext Energies Pvt. Ltd. had done such act which rendered the goods liable for confiscation under Section 111 of the Customs Act, 1962. By doing such acts they

concerned themselves in dealing with offending goods and thereby rendered themselves liable to penalty under Section 112(a)(ii) of Customs Act 1962.

19. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

- i) I order to re-assess the Bills of entry nos. 8085213 and 8092710 dated 30.01.2025 and Bill of Entry No. 8112725 dated 31.01.2025 on merits without Notification benefit of sr. no. 237 of Notification No. 50/2017-Cus dated 15.06.2017.
- ii) I order to confiscate the goods having total value of Rs. 3,97,00,380/- (Rupees Three Crore Ninety Seven Lakh Three Hundred Eighty Only) under Section 111(m) of the Customs Act, 1962. However, I given an option to the Importer to redeem the goods on payment of redemption fine of **Rs. 8,00,000/- (Rupees Eight Lakhs only)** under Section 125 of Customs Act, 1962 in lieu of confiscation of the goods for the reasons state in foregoing paras.
- iii) I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakhs only)** upon the Importer M/s. Novanext Energies Pvt. Ltd. under Section 112(a)(ii) of the Customs Act, 1962.

20. This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.

**Additional Commissioner,
Custom House, Mundra.**

F. No. CUS/APR/INV/97/2025-Gr. 2
DIN: 20250371MO0000555F2C

Date:17.03.2025

By RPAD/ By Hand Delivery/Email/Speed Post

To:

M/s. Novanext Energies Pvt. Ltd. (IEC AAHCN9295Q),
SHED NO. C-2/334,
GIDC Shanker Tekri Udyognagar,
Jamnagar – 361004

Copy to:

- 1) The Dy./Asstt. Commisioner (RRA/TRC), Custom House, Mundra.
- 2) The Dy./Asstt. Commissioner of Customs (SIIB), Custom House, Mundra.
- 3) The Dy./Asstt. Commissioner of Customs, Review Cell, CH, Mundra.